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Geneva, 21 June 1990
Item 4 of the provisional agenda

ECONOMIC CO-OPERATION AMONG DEVELOPING COUNTRIES IN THE FIELD OF SHIPPING, PORTS AND MULTIMODAL TRANSPORT

Overview of recent developments

Report by the UNCTAD secretariat

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INTRODUCTION

(i) The Committee on Shipping, in its decision 63 (XIII) on economic co-operation among developing countries in the area of shipping, ports and multimodal transport, had requested the convening of a group of experts to propose an appropriate framework and modalities of interregional co-operation in the field of shipping services. Accordingly, a Group of Experts was convened by the Secretary-General of UNCTAD in June 1989. To assist it in its deliberations, the Group had before it a report prepared by the UNCTAD secretariat entitled:

- "Economic co-operation among developing countries in the field of shipping services" (TD/B/C.4/AC.10/2).

That report provided a synthesis of earlier work carried out in UNCTAD in the area of ECDC in shipping, ports and multimodal transport, as well as of the experience with co-operation accumulated in the countries members of CMEA and EEC. In addition, the report made a number of proposals for possible lines of action by the Group.

(ii) In addition, the following background documents were made available to the Group of Experts:

- "Experience of countries members of the European Communities in developing co-operation in the field of maritime transport" (UNCTAD/SHIP/624)

- "Experience of member countries of the Council for Mutual Economic Assistance in developing co-operation in the field of maritime transport" (UNCTAD/SHIP/625).

These two documents cover, in more detail, co-operation entered into within CMEA and EEC in the field of maritime transport and thus provided information to the Group on more specific types of actual co-operation that may be of relevance and directly applicable to developing countries. Other relevant background documents were also made available to the Group. 1/

(iii) Pursuant to the resolution "Co-operation among developing countries in shipping, ports and multimodal transport" adopted by the Ad hoc Intergovernmental Group of Senior Officials on Co-operation among Developing Countries in Shipping, Ports and Multimodal Transport, convened by the Secretary-General of UNCTAD in Geneva from 21 to 25 September 1987 (report TD/B/C.4/311-TD/B/C.4/AC.9/4), the two last-mentioned reports are also being made available to the Committee on Shipping at its fourteenth session.

(iv) The Group of Experts agreed on a number of recommendations for the establishment and strengthening of co-operation among developing countries (see report of the Group of Experts (TD/B/C.4/321 - TD/B/C.4/AC.10/3)), which are submitted to the Committee on Shipping at its current session for consideration and decision on further action. In its consideration of the report of the Group, the Committee may wish to take into account certain developments that have taken place in parallel with or following the work of the Group.

(v) Efforts by developing countries to find solutions to shipping policy problems on a co-operative basis continue to be pursued on a North-South as well as on a South-South basis. South-South co-operation is, of course, not to be considered as an alternative - but rather as complimentary - to continued North-South co-operation. Indeed, continued North-South assistance will be essential in order to give impetus to and to assist South-South co-operative arrangements in reaching their goals. Thus, the actual forms and partners involved in co-operative arrangements are normally based on the intrinsic merits of each individual case, depending on specific problems encountered and their potential solutions.

(vi) Since the meeting of the Group of Experts in June 1989, a number of developments have been initiated or further pursued which aim at improving the situation of developing countries through intensified co-operative action. Such developments have taken place either as a direct response to the concrete recommendations formulated by the Group of Experts or, in other cases, while reflecting the contents of the recommendations, have occurred in parallel thereto. The necessary action has been initiated by various parties concerned, i.e. commercial parties, governments, regional intergovernmental organizations as well as organizations of the United Nations.

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Chapter I

GENERAL DEVELOPMENTS

A. The UNCTAD Committee on Economic Co-operation among Developing Countries

1. The work of the Committee on Shipping in the field of ECDC in shipping, ports and multimodal transport needs to be considered in the broader context of the activities undertaken within UNCTAD and in particular, in the Committee on Economic Co-operation among Developing Countries. The international community, in the Final Act of UNCTAD VII, recognized the primary responsibility of developing countries for their own development and the need to improve their mutual economic co-operation in pursuance of the objectives of national and collective self-reliance. The Conference also agreed that efforts to that end would need to be complemented by co-operation among all countries and that multilateral economic co-operation should be a continuing endeavour from which important benefits could be expected for the development process and for the world economy as a whole. 2/ More recently, at its fifth session (1 to 9 June 1989) the Committee on Economic Co-operation among Developing Countries adopted resolution 4 (V) dealing, inter alia, with some areas of economic co-operation among developing countries for new initiatives. 3/ In that resolution the Committee requested the UNCTAD secretariat to take action through technical assistance and other activities aimed at promoting and expanding trade among developing countries and called for the strengthening of co-operation between enterprises through exchange of information and technological know-how and for improved trade financing mechanisms.

2. The fifth session of the Committee took place during a time of declining South-South trade. In order to stop this negative trend some important measures have so far been taken, including the conclusion of the first round of negotiations on the Global System of Trade Preferences (GSTP) aimed at liberalizing trade among developing countries. Developing countries continue to be committed to this course of action as is evidenced by their determination to hold a second round of negotiations to deepen and widen the existing preference system.

3. These endeavours by developing countries can, however, only produce satisfactory results, if necessary transport infrastructure and services are being provided or improved at the same time. Given the determination of governments of developing countries to tighten links among their countries through increased trade, the implementation of the recommendations made by the Group of Experts on ECDC in the field of shipping, ports and multimodal transport has important implications for the development process that go considerably beyond their immediate importance for the development of the transport industry of developing countries. Thus, for instance, trade promotion has been a major underlying objective for an on-going technical assistance activity of the UNCTAD secretariat, determining the feasibility of the establishment of coastal shipping services between the countries of West and Central Africa.

B. The Fourth ACP-EEC Convention

4. One of the most important recent developments both with regard to South-South and North-South co-operation has been the negotiation and subsequent signing, in December 1989, of the Fourth ACP-EEC Convention (Lomé IV). This Convention will over the next 10 years govern the particular relationship between the European Community and the States members of the ACP group. As was already the case under Lomé III, the Convention contains a separate title on "Transport and Communications" which, inter alia, deals with matters concerning maritime relations among the Contracting Parties. In fact, the basic agreement concerning shipping matters has remained unchanged as included in Title V of Lomé III.

5. As far as technical and financial co-operation in the fields of shipping, ports and multimodal transport is concerned, the Convention spells out those issues to which special attention should be given and which include some of the points raised also in the recommendations adopted by the Group of Experts. These include:

- development of interregional shipping with a view to encouraging intra-ACP co-operation, and improvements in the functioning of ACP shipping;

- technology transfer including multimodal transport and containerization to the promotion of joint ventures;

- setting up of appropriate legislative and administrative infrastructure and the improvement of port management, notably through vocational training;

- development of inter-island shipping services and connecting infrastructures and increased co-operation with economic operators.

6. In total, financial and technical assistance made available to the ACP countries over the next five years 4/ under Lomé IV amounts to 12,000 million ECU. Specific allocations have, as in previous agreements, not been made.

7. It is to be noted, however, that the maintenance of the articles on shipping as they had appeared already in Lomé III did not signify a continued general agreement on the shipping policy issues contained therein. Thus, the new Convention contains two unilateral declarations: one by the European Economic Community and the other by the ACP group of countries on the provisions of articles relating to maritime transport dealing with the application of the United Nations Convention on a Code of Conduct for Liner Conferences in particular and the aspirations of ACP countries for a more adequate participation in shipping in general. In its declaration the Community stresses the need for unrestricted access to the liner trade on a commercial basis and that competitive access to bulk trades shall not be impaired. Within this context, the Community and its member States repeat their desire to co-operate fully with the ACP States with a view to improving the efficiency of their shipping industry particularly in the framework of regional development and by way of joint ventures. The ACP States, in their declaration, reiterate the great importance they attach to shipping services as one of the major forces behind their economic development and stress the right to a greater and fairer participation in the carriage of all cargoes

generated by their external trade. The ACP States emphasize the need to ensure that ACP shipping industries are able to participate on an equitable basis in markets which are dominated by powerful international shipping companies and reaffirm their view that the provisions on maritime transport of the Lomé IV Convention do not imply that such international companies can operate, either in or outside liner conferences, without restraint. The ACP States also reaffirm their determination to minimize possible adverse effects on their maritime interests of the application of the Lomé IV Convention and to ensure the enhancement of their participation in bulk cargo shipping.

Chapter II

DEVELOPMENTS IN THE FIELD OF SHIPPING, PORTS AND MULTIMODAL TRANSPORT

A. UNCTACDA II

8. The United Nations General Assembly in December 1988 proclaimed the second United Nations Transport and Communications Decade for Africa (UNTACDA II) for the period 1991 to 2000. Subsequently, the United Nations Economic Commission for Africa (ECA), in co-operation with the Inter-Agency Co-ordinating Committee of the Decade, has held a number of preparatory meetings to plan the formulation and implementation of the Decade programme. In particular, the Seventh Conference of African Ministers of Transport held in Tangiers, Morocco, from 14 to 16 November 1989 adopted a document on the objectives, strategies and guidelines for the Decade. It furthermore established a time-frame for the finalization of the Decade programme to ensure its submission for consideration and adoption by the United Nations General Assembly in 1991.

9. In the specific area of maritime transport the Conference of Ministers decided on certain areas of concentration, among which subregional and regional co-operation figure prominently. Thus, the following priorities for co-operation in shipping were retained:

- joint ventures in shipping services;
- cargo sharing arrangements;
- multinational shipping consortia in liner and bulk trade;
- multinational shipbuilding and ship repairing enterprises;
- harmonization of national shipping policies in a subregional framework;
- improvement of aids to navigation and ship-to-shore communications;
- prevention and combating of marine pollution;
- promotion of marine insurance institutions;
- harmonization of documentation and procedures to facilitate maritime trade. 5/

Additional areas of concentration that call for co-operative solutions relate to manpower development in the field of shipping as well as ports and multimodal transport.

10. As was the case in the implementation of the first Decade, the UNCTAD secretariat will continue to collaborate closely with ECA and other United Nations agencies as well as African intergovernmental organizations in the formulation and implementation of the second Decade programme. In the preparatory phase UNCTAD has been instrumental in the formulation of objectives and of strategies for implementation of the Decade programme in its fields of competence. Furthermore, it is to be expected that UNCTAD will assume the role of a lead agency in the sub-sectoral working group on maritime transport which includes shipping, ports and inland waterways.

11. Activities are also continuing within the ESCAP region towards the implementation of the regional programme of action for the Transport and Communications Decade for Asia and the Pacific (1985-1994). 6/

B. Co-operation in operational activities

12. The Group of Experts made a number of recommendations dealing either directly or indirectly with the need for and the modalities of closer co-operation between shipping companies of developing countries. To some extent shipping companies of developing countries are already making greater efforts to resolve certain operational problems encountered by them through subregional or regional co-operation. This may not yet go as far as concluding joint venture agreements but rather involves general moves towards rationalization of services. Two aspects of this apparently increasing propensity to co-operate may be noted. Firstly, shipping companies, while not neglecting the potential of North-South co-operation, appear to be increasingly aware of the benefits of subregional/regional forms of co-operation. Secondly, attempts at co-operative arrangements generally stem from economic and commercial necessities rather than directly from political decisions to establish or improve co-operation taken at the various subregional or regional levels. Similarly, in the field of multimodal transport, operators from some developing countries have entered into co-operative arrangements to broaden their operational basis. Consequently, a number of technical and commercial agreements have been concluded not only by MTOs but also by modal carriers aiming at extending their services to cover multimodal operations. 7/

13. In the field of research and development, the Group of Experts, inter alia, recommended that research activities carried out in some regions be made available to other developing countries and referred in this respect to shipping models developed by ESCAP in the context of the Regional Maritime Strategy Study (RMSS). The RMSS models that are intended to provide a harmonized decision-making tool for policy makers concerned with maritime investments are expected to be available to governments of the ESCAP region by the end of 1990. The extent to which these models may also be applicable to other regions will need further study as well as the modalities and necessary adaptations which may be required to allow for the practical use of this tool in other developing countries or regions.

14. With regard to co-operation between ports it may be recalled that the Committee on Shipping, at its thirteenth session, adopted resolution 61 (XIII) on its work programme, in paragraph 16 of which it invited the Secretary-General of UNCTAD to convene an ad hoc intergovernmental group of port experts which would, as one of its tasks, study the "possibilities for regional co-operation in developing countries in the field of ports, with a view to ensuring the best use of scarce resources". 8/ The ad hoc group is scheduled to meet in Geneva in September 1990 and the secretariat is currently preparing the documentation on this subject together with another document requested in resolution 63 (XIII) dealing with transhipment, maintenance of port equipment, and guidelines on the use of computers in ports. The issue of co-operation will be of vital importance in some of these studies and, consequently, in the deliberations of the forthcoming ad hoc group.

C. Co-operation in training

15. In its recommendation 13 the Group of Experts calls, inter alia, for continued support for the TRAINMAR project. Apart from national projects, there are at present eight subregional/regional TRAINMAR projects in Africa, Latin America and Asia, which continue to contribute substantially to the

improvement of the quality of maritime services provided by developing countries. The Committee may take note of the fact, however, that while the implementation process of these regional projects is to be considered highly positive from a substantive point of view, the management of a number of TRAINMAR project activities is particularly difficult owing to a lack of long-term financial commitment to the projects. Efforts are continuing to arrive at improved long-term funding arrangements for TRAINMAR.

16. With regard to on-the-job training, UNCTAD is continuing to implement the JOBMAR project. While this project has so far aimed primarily at improving managerial capabilities through North-South co-operation, special efforts are being made to provide on-the-job training possibilities offered in transport companies of developing countries as well.

D. Co-operation among shippers' councils

17. The tenth session of the Meeting of the Chief Executives of National Shippers' Organizations was held in Seoul, Republic of Korea, in October 1989, under the auspices of ESCAP. The Meeting reconfirmed the need for continued subregional and regional co-operation to protect shippers' interest effectively. In this context, it called on donor countries to continue funding activities under the "Ship Users' Co-operation Project (SUCOP)" executed by ESCAP and up to now funded by the Government of Norway.

E. Co-operation in policy matters and institutional structures

18. The recommendations of the Group of Experts on co-operation in policy matters and on the creation or improvement of existing institutional structures (recommendations 15 to 19) represent a largely integrated approach to closely linked problems of formulating harmonized maritime policies and their implementation through effective intergovernmental institutions. However, existing institutional problems, which are particularly addressed in recommendation 18, are not necessarily specific to shipping alone but appear to be of a general nature and have to be faced by quite a number of economic integration groupings. Reference may be made, in this connection, to the deliberations of the meeting of the Heads of Secretariats of Economic Co-operation and Integration Groupings of Developing Countries held in Geneva in 1989, 9/ which stressed the need to overcome institutional problems in order to create the necessary prerequisites for the effective implementation of integration processes. Consequently, it can be expected that problems of an institutional or organizational nature will continue to be taken up at a wider level and that maritime integration groupings may benefit also from the experience gained with new initiatives aimed at resolving the organizational problems of other economic co-operation and integration groupings.

19. At the regional level an important initiative was taken in the specific field of maritime transport by the Special Conference of African Ministers of Transport, convened by the Organization of African Unity at Addis Ababa, 10-12 July 1989. The Conference adopted a resolution on "Intra-African Co-operation in Maritime Transport" 10/ calling, inter alia, for the elaboration and subsequent adoption of an African maritime charter, which would serve as a substantive and institutional guideline for regional maritime co-operation. In line with the decision of the Conference of African Ministers, this charter would not only govern intra-African co-operation but also relate to co-operation between African countries and countries outside

the region. In implementation of this decision it is expected that the next session of the Conference of Ministers of Maritime Transport will be devoted to the examination of the draft maritime charter and to its adoption.

20. In line with the decision of the Conference of African Ministers the proposed maritime charter will constitute the basic document initiating concrete co-operative action in the field of maritime transport in that region. In order to do so, institutional structures will have to be created at the regional level; and existing subregional bodies, such as MINCONMAR, ISCOS, etc., will need to be strengthened, 11/ and have adequate links established among them. Furthermore, the charter will define priority areas for intra-African maritime co-operation. Judging by the decisions taken by the Ministers, priority areas in the specific field of shipping will include freight grouping, centralized management, research and management, maintenance and overhauling, pooling of financial resources, and maritime transport legislation. Of specific importance will be any form of co-operation between land-locked and coastal transit countries.

21. In Latin America, efforts are being made by the Latin American Integration Association (ALADI) to revise the 1966 Convention on Maritime Transport adopted under the auspices of the then Latin American Free Trade Association (LAFTA). The purpose of the current effort is to adapt the Convention to the changing economic, commercial and political environment of shipping and thus to ensure the continued relevance of the Convention as an instrument of regional co-operation in shipping.

Notes

1/ These documents contain a number of proposals for co-operation among developing countries which were submitted to earlier meetings of the Committee on Shipping and the Ad hoc Intergovernmental Group of Senior Officials on Co-operation among Developing Countries in Shipping, Ports and Multimodal Transport. These documents are listed below:

- TD/B/C.4/273 - Draft programme of action for co-operation among developing countries in the area of shipping, ports and multimodal transport

- TD/B/C.4/AC.9/2 - Co-operation among developing countries in the field of shipping, ports and multimodal transport

- TD/B/C.4/311-TD/B/C.4/AC.9/4 - Report of the Ad hoc Intergovernmental Group of Senior Officials on Co-operation among Developing Countries in Shipping, Ports and Multimodal Transport

- TD/B/C.4(XIII)/Misc.2 - Report of the Committee on Shipping on its thirteenth session (to be issued in final form as TD/B/1170-TD/B/C.4/318)

- TD/B/C.4/AC.7/4 - Co-operation between ports

- TD/B/C.4/298-TD/B/C.4/AC.7/5 - Report of the Ad hoc Intergovernmental Group of Port Experts

2/ For the Final Act of UNCTAD VII, see TD/350.

3/ For the text of resolution 4 (V) see UNCTAD, Report of the Committee on Economic Co-operation among Developing Countries, TD/B/1217-TD/B/C.7/98, annex I.

4/ While the Agreement as a whole has been concluded for a duration of 10 years, financial allocations will be renegotiated after five years.

5/ ECA, The Second United Nations Transport and Communications Decade for Africa, DEC/TRANSCOM/67/Rev.3, para. 38 (vi), Addis Ababa, 4 July 1989.

6/ General Assembly resolution 39/227 of 18 December 1984.

7/ For instance, the Chilean MTO Intermodal S.A. has signed an agreement with Mesquita Transportes Internacionales Ltda. de Brazil, with the aim of expanding its services to this South American market after having already consolidated its position in the United States, Europe and the Far East. This is a technical and commercial collaboration agreement which in principle will be concerned with the field of sea/air transport but to some degree will also cover land transport. Two south-east Asian VO-MTOs have established joint ventures with local trucking companies in countries they servce within the region. One to improve its multimodal transport services in Malaysia, the other in southern China.

8/ UNCTAD, Report of the Committee on Shipping on its thirteenth session, TD/B/1170-TD/B/C.4/318.

9/ See UNCTAD, Report of the First Session of the Meeting of Heads of Secretariat of Economic Co-operation and Integration Groupings of Developing Countries, Geneva, 15-17 March 1989, TD/B/C.7/94-TD/B/C.7/AC.3/7.

10/ See Organization of African Unity, Report of the Secretary-General on the Special Conference of African Ministers of Maritime Transport, to the Fiftieth Ordinary Session of the Council of Ministers, Addis Ababa, 17-21 July 1989, CM/1553 (L).

11/ In this context the Committee may wish to take note of a UNDP funded and UNCTAD executed technical assistance project (RAF/87/072, "Strengthening of ISCOS") aimed at improving the freight rate negotiating position of ISCOS.

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Fourteenth session
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Item 5 of the provisional agenda

REVIEW OF THE WORK PROGRAMME OF THE COMMITTEE

Report by the UNCTAD secretariat

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Annex

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I. FUNCTIONS AND WORK PROGRAMME OF THE COMMITTEE ON SHIPPING

1. The Trade and Development Board decided, in paragraph 16 of its resolution 231 (XXII) of 20 March 1980, "to request the main Committees to review regularly the elaboration of their work programmes and the implementation of their decisions". Moreover, in paragraphs 6 and 7 of the "Report of the Ad hoc Intergovernmental Working Group on the In-depth Study of the United Nations Intergovernmental Structure and Functions in the Economic and Social Fields" (TD/B/1154), endorsed by the Board in its resolution 352 (XXXIV) of 20 November 1987, each of the main Committees is required at each regular session, without prejudice to its mandate, to (a) review the elaboration of its work programme and the implementation of its decisions, (b) consider and decide on the work ahead including tasks to be introduced or prolonged in the work programme; and (c) ensure that any specific tasks be clearly defined with a timetable for their accomplishment.

2. This report is divided into four parts: A. "Shipping policy"; B. "Port development"; C. "International maritime legislation"; and D. "Technical assistance and training". It summarizes activities undertaken by the secretariat in the above-mentioned fields and in response to intergovernmental decisions, describes measures taken for consultations and co-operation with other United Nations bodies, and outlines, where appropriate, proposals for further work for the consideration of the Committee on Shipping.

3. It should be noted that, in accordance with the provisional agenda of the fourteenth session of the Committee on Shipping, as approved by the Trade and Development Board at the second part of its thirty-fourth session, and in response to the request addressed to the UNCTAD secretariat in resolution 61 (XIII) by the Committee on Shipping, for a separate report containing a detailed inventory of the studies so far carried out on multimodal transport and containerization, a report thereon with a presentation of the results for consideration, evaluation and decision of the future work programme and priorities in this field, has been prepared and is submitted to the Committee as document TD/B/C.4/323.

II. INTERGOVERNMENTAL DECISIONS AND THEIR IMPLEMENTATION

A. Shipping policy

1. Protection of shippers' interests

4. In its resolution 59 (XII), the Committee on Shipping requested the UNCTAD secretariat to prepare, for information, a report based on experiences in freight rate negotiations in order to assist shippers' organizations in determining appropriate means of preparing for and proceeding in their negotiations with conferences. The resolution also requests the secretariat to report to it at its fourteenth session on how the recommendations contained in the resolution have been implemented. The report which is being submitted to the Committee as document TD/B/C.4/332 (Protection of shippers' interests - Experiences in freight rate negotiations) responds to these requests.

5. The report notes that relations and consultations between shippers' organizations and conferences have grown considerably over the years. Liner conferences now generally agree to hold consultations with established shippers' organizations, although the consultations are not necessarily satisfactory in all cases to the parties concerned. Many countries, including developing ones, have established shippers' organizations, which is an indication of the importance being attached to the protection of shippers' interests in the liner trading system.

6. In recent years liner shipping has undergone important changes both of an institutional and operational nature. These include: an overtonnage situation; the growth in importance of non-conference lines; the decline in importance of loyalty contracts and, in certain countries, the emergence of service contracts and shippers' associations; in some trades, increases in the frequency and levels of surcharges; the wide establishment of consortia among shipping lines; the expansion of trans-shipment services and door-to-door integrated combined or multimodal transport services; the growth of non-vessel-operating common carriers (NVOCC); the establishment of "super conferences"; the conclusion of "discussion agreements" between conferences and non-conference lines in certain trades in order to rationalize services and to stabilize freight rates; and, the introduction of new types of freight rates (e.g. LCL, FCL, box and FAK rates as well as inter-modal through rates).

7. Many of the changes were not foreseen in earlier years, particularly when the United Nations Liner Code (United Nations Convention on a Code of Conduct for Liner Conferences) was adopted. This means that new procedures in consultations or in relations between shippers and conferences or shipping lines have to be developed to respond to the changed situation, and shippers' organizations have to take into account all the new developments in their consultations and negotiations with conferences or shipping lines.

8. Committee resolution 59 (XII) identifies a number of subject-matters on which conferences and shippers' organizations should hold consultations. These subjects largely reconfirm article 11 of the United Nations Liner Code. While the resolution and the Code identify broad principles for consultations, neither of them provides procedural details as to how all the various aspects of the consultations should be conducted. The procedures currently in use have been decided by the commercial parties involved (conferences or shipping

lines and shippers' organizations or shippers). However, it would appear that the procedures that have evolved in different trades have in many cases not been mutually satisfactory to the commercial parties.

9. The report notes that, in order to be effective, a shippers' organization must be broadly representative of the trading interests of the country concerned and involve the direct participation of shippers. There are, however, many developing countries which have not yet been able to establish suitable organizations for protecting the interests of shippers. Such countries may require external assistance in setting up the organizations and it is recommended that favourable consideration for financial and technical assistance to such countries should be given.

10. Subregional/regional co-operation among shippers' organizations plays an important role in negotiations. Such co-operation should therefore be promoted and/or strengthened.

2. Development of world shipping

11. The Committee on Shipping, in its resolution 62 (XIII) - Imbalance between supply and demand - urged the taking by the international community of a number of measures in order to achieve a more balanced situation between supply and demand in world shipping, bearing in mind the special interests of developing countries. More particularly, it urged all States members of UNCTAD - in particular within the framework of regional economic organizations of which they are members - to consider or reconsider the adoption and effective implementation of shipping policies which promote a more balanced situation in world shipping.

12. The Committee requested the UNCTAD secretariat to continue to monitor developments in world shipping and likewise those developments in world shipbuilding which have an impact on world shipping developments, with particular reference to the imbalance between supply and demand in world shipping, and to report in co-operation with the relevant intergovernmental organizations thereon to the Committee on Shipping at its fourteenth session, including possible proposals for the international community to consider with the view to avoiding imbalance situations and promoting a more balanced development of world shipping.

13. The report submitted as document TD/B/C.4/333 (Development of world shipping) responds to the above-mentioned requests. The report indicates that, although the overall imbalance situation (i.e. overcapacity) has been considerably reduced during recent years, several specific shipping sectors, continue to be affected by excess capacity.

3. United Nations Convention on Conditions for Registration of Ships

14. Following the adoption of the United Nations Convention on Conditions for Registration of Ships on 6 February 1986, it was signed by 16 countries subject to subsequent definitive signature, ratification or accession (Algeria, Bolivia, Cameroon, Côte d'Ivoire, Czechoslovakia, Egypt, Haiti, Hungary, Indonesia, Iraq, Libyan Arab Jamahiriya, Mexico, Morocco, Poland, Senegal, USSR). As at 31 December 1989, six countries had become Contracting Parties to the Convention (Côte d'Ivoire, Mexico, Hungary, Iraq, Libyan Arab Jamahiriya, Haiti).

15. A number of countries have also amended their legislation or adopted new legislative and administrative provisions as regards registration of ships under national register(s), taking into account the provisions - or certain provisions - of the Convention. More specifically, article 12 which contains provisions as regards bareboat chartering has attracted widespread attention as the practice of bareboat chartering is becoming more prevalent in ocean shipping.

16. The UNCTAD secretariat has received a number of requests, generally on an informal basis, from Governments in relation to legislative provisions to be adopted or amended as well as regarding possible institutional arrangements or administrative procedures which could be put in place as regards the registration of ships in the countries concerned.

4. United Nations Convention on a Code of Conduct for Liner Conferences

(a) Status of the Convention

17. The Convention continues to attract new Contracting Parties. At the time the Convention came into force in October 1983, there were 60 Contracting Parties. By end of December 1989 the number of Contracting Parties had increased to 74. The last three accessions, namely those of Somalia (14 November 1988), Burkina Faso (30 March 1989) and Italy (30 May 1989), took place after the convening of the Review Conference in October/November 1988. */

(b) The Review Conference

18. In accordance with the provisions of article 52 of the Convention, a Review Conference was convened in Geneva from 31 October to 18 November 1988 in order "to review the working of the Convention, with particular reference to its implementation and to consider and adopt appropriate amendments".

19. In the documentation prepared for the Review Conference, five sets of specific issues relating to the implementation and working of the Convention were identified by the UNCTAD secretariat as appropriate for consideration by the Review Conference. These covered: the implications for the Convention of the technological and structural changes in world liner shipping; the scope of application of the Convention; reservations to the Convention; modalities of implementation; and, the activities of non-conference lines in liner trades to which the Convention applies.

20. All States were invited to attend the Review Conference. The Conference was attended by 102 States, including 63 Contracting States. Agreement could, however, not be reached on the rules of procedure which should be applicable to the Review Conference in particular as regards to the extent to and manner in which States, non-Contracting Parties, should participate in decision-making at the Review Conference. The limited time that was available for a debate on the substantive issues before the Conference at the November 1988 session was sufficient only for a broad exchange of views on

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*/ A full list of Contracting Parties in alphabetical as well as in chronological order of ratification or accession is shown in document TD/CODE.2/3 to which list the aforementioned three countries should be added.

them between the various Groups of countries. This exchange of views indicated that there were significant differences between Governments with regard to the two interrelated subjects of the scope of application of the Convention and the treatment of non-conference lines, as well as with regard to the appropriate modalities of implementation of the Convention. The debate on the subject of reservations generally reflected the differences between the shipping interests/objectives of the developed market-economy countries and those of many of the developing countries. As regards technological and structural changes in world liner shipping, developing countries expressed their concern that the speed of such changes tended to affect them adversely with regard to their participation in world liner shipping.

(c) Preparation for the resumed session of the Review Conference

21. At the conclusion of the session, a resolution was adopted unanimously which recognized the continuing validity of the Convention and invited all States entitled to become contracting parties, which had not yet done so, to consider ratifying or acceding to the Convention. The resolution requested the Secretary-General of the United Nations to convene a resumed session of the Review Conference after agreement had been reached between States on the outstanding issues relating to the rules of procedure through consultations with Governments to be undertaken by the President of the Conference and the Secretary-General of UNCTAD.

22. Following these consultations a compromise package on the rules of procedure has been sent to the various Regional Group Co-ordinators for consideration by Governments. The compromise package includes a recommendation for a general understanding on the work of the Review Conference which would take the form of a statement to be made by the President of the Conference and recommendations for those rules on which there had been earlier disagreement. The proposed recommendation for the general understanding suggests that the Review Conference should concentrate on reviewing the working and the implementation of the Code while seeking to leave the scope and fundamental principles of the Convention unchanged. It further suggests that it would be preferable to reflect the outcome of its deliberations on various issues in documents such as guidelines or memoranda of understanding, while not excluding consideration of amendments where it can be shown that the provisions of the Code are failing to meet its original objective. The compromise package of rules is incorporated in document TD/CODE.2/2/Amend.1, dated 27 June 1989.

23. Consultations with Groups are continuing in order to obtain a final agreement on the rules of procedure. After such agreement has been reached the Secretary-General of the United Nations will take action to convene the resumed session.

(d) Implementation of the Convention - Revision of document UNCTAD/ST/SHIP/1

24. The UNCTAD Shipping Division continues to receive requests from Governments and interested commercial parties such as shippers' organizations, liner conferences and national shipping lines of developing countries for advice and guidance with regard to the implementation of the Convention. Certain recommended guidelines towards the application of the Convention were set out in UNCTAD document UNCTAD/ST/SHIP/1 in 1986. In the context of the preparations for the Review Conference, further recommendations for

internationally approved guidelines for the implementation of the Convention which may be considered for adoption by the Review Conference were set out in document TD/CODE.2/4. There would appear to be a need to revise document UNCTAD/ST/SHIP/1 in the light of ongoing developments in or affecting world liner shipping and of the conclusions and guidelines that may eventually result from the Review Conference.

25. Apart from taking into account the results of the Review Conference, the UNCTAD secretariat's contacts with Governments, national shipping lines and shippers' organizations, in particular in developing countries, indicate that there is a need for further guidance in relation to the following three areas:

(i) The operational arrangements for cargo-sharing schemes within liner conferences;

(ii) The operational arrangements for consultations between shippers' organizations and liner conferences; and

(iii) The operational arrangements for shipping consortia and other forms of co-operation between liner shipping operators.

26. With regard to the first item, namely, operational arrangements for cargo-sharing within liner conferences, the Governments and the national shipping lines of a number of developing countries appear to have limited knowledge of how such cargo-sharing arrangements are implemented within conferences. This is either because such cargo-sharing arrangements had never been operated in some liner trades or because such arrangements had ceased to be implemented in many conference trades many years ago as a result of the weakening of conferences in the context of the severe overtonnaging and the structural changes that have taken place in liner trades. A number of Governments and national shipping lines in particular would appreciate obtaining further information as regards the operation of a posteriori schemes of cargo-sharing which produce equitable results consistent with the principles of the Code.

27. The operational arrangements for implementing a scheme of cargo-sharing within a conference will vary in complexity depending upon the geographical scope of the trading area covered by the Conference and the number of its member lines. The operational arrangements would be very complex indeed for a large conference serving a large number of countries covering an entire region or subregion at either end of the trade. New operational structures such as consortia with all their diversity would make the operational arrangements even more complex. Any guidance that could be given with regard to the execution of such operational arrangements will undoubtedly help in the more effective implementation of the principles of the Code, as well as in promoting the adoption of more flexible cargo-sharing arrangements consistent with the rationalized development of the merchant fleets of developing countries taking into account the technological and structural changes that have taken place in liner shipping.

28. The second area where there appears to be a serious lacuna is with regard to operational arrangements for consultations between shippers' organizations and liner conferences. A recent survey carried out by the UNCTAD Shipping Division indicates that, in quite a number of liner trades, there has not been a serious attempt to apply the provisions of the Code to shipper/shipowner

consultations. In many trades, consultations appear to be confined only to general freight rate increases and to some extent, surcharges. Most of the other matters, which may be the subject of consultations under article 11, paragraph 2, of the Convention, do not appear to have become the subject of consultations at all. Sweeping technological and structural changes have taken place in the liner shipping industry without any consultations having taken place as to their possible effects on the trade. Even with regard to freight rate increases and surcharges, consultations appear to suffer from the lack of clearly established procedures for such consultations and sufficient and clear information acceptable to both sides. Apart from general freight rate increases and surcharges, important changes in freight structures and new concepts relating to freight rates do not appear to have featured in consultations. There appears to be a strong need for further guidance with regard to both appropriate procedures and appropriate analytical tools to overcome the existing deficiencies with regard to the effective implementation of the provisions of shipper/shipowner consultations as provided for in the Code. Any such guidance should also take into account the implications of new developments such as multimodal transport and the relevance of institutional structures such as loyalty arrangements in the fundamentally changed circumstances of the liner shipping industry.

29. It may be concluded that there is a need for strengthening the efforts of the UNCTAD secretariat in providing guidance towards the more effective implementation of the Code.

30. As regards the third area, many Governments and national shipping lines of developing countries lack sufficient information as to how shipping consortia are organized and the financial and operational arrangements that are needed for their efficient management and the equitable sharing of costs and revenues. Other possible forms of co-operation between liner shipping operators also need to be further examined. Better information on these matters will undoubtedly help to promote greater co-operation between the shipping lines of developing countries, as well as between the shipping lines of developed and developing countries with benefits to all parties concerned.

(e) Maritime transport of selected commodities and manufactured goods

31. Resolution 61 (XIII), paragraph 1, requested the secretariat to update existing studies on the maritime transportation of selected commodities as well as to prepare studies which will analyse the impact of conditions of ocean transport services, particularly ocean freight rates, on exports of manufactured goods from developing countries, and on exports in trades between those countries, in order to provide them with information required for making appropriate decisions in this area.

32. A number of studies have been conducted during past years on the maritime transport of selected commodities (e.g. tropical timber, jute, cotton, natural rubber, iron ore, rice, hydrocarbons, abaca, bananas). These studies were undertaken following specific requests made by developing countries particularly concerned with ocean transport problems and/or in particular, freight rate levels of the commodities concerned. During recent years, such problems have been generally less prevalent or acute as a result of overcapacity and increased competition for the supply of shipping services in many sectors of world shipping.

33. At the moment, UNCTAD is co-operating with UNIDO in the execution of a shipping and transport study of timber and wood products and of the impact of transport costs on prices of products in domestic markets and on export earnings from wood products. This study will be submitted to the Second Consultation on the Wood and Wood Products Industry scheduled to be held under UNIDO auspices in 1990. It will also be submitted to the Committee on Shipping as soon as it has been finalized.

(f) Trade in services

34. Trade in services has been under consideration within UNCTAD for a considerable time. Recently, the Trade and Development Board was mandated in the Final Act of UNCTAD VII to follow closely developments and issues in the Uruguay Round of particular interest to developing countries.

35. Subsequently, the Board deliberated on this issue at its thirty-fifth session. Within the context of these deliberations the Trade and Development Report, 1988 devotes a considerable part (Part Two) to the question of services in the world economy, while annex 3 thereto is specifically concerned with world shipping and international trade.

36. Additionally, the UNCTAD secretariat, in implementation of decisions 309 (XXX) of the Trade and Development Board and paragraph 105 (20) of the Final Act of UNCTAD, is executing national and regional technical assistance projects aiming at supporting developing countries in Uruguay Round negotiations, including those on liberalization of services. 1/ Within this framework of UNCTAD/UNDP projects of technical assistance to developing countries for multilateral trade negotiations, sectoral issues, including trade in shipping services, are analysed in further detail in a paper entitled "Trade in Services - Sectoral Issues" (UNCTAD/ITP/26). 2/

37. Negotiations on the liberalization of services were taken up by GATT pursuant to the Ministerial Declaration on the Uruguay Round adopted at Punta del Este on 20 December 1986. In this declaration the Ministers concerned decided on the negotiation of a framework agreement and stated that "... Negotiations [on trade in services] shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries."

38. The UNCTAD secretariat has followed closely the work within GATT of the Group of Negotiations on Services (GNS). For its initial phase of work, this Group identified five substantive elements to be discussed:

(i) Definitional and statistical issues;

(ii) Broad concepts and principles;

(iii) Coverage;

(iv) Existing international disciplines and agreements; and,

(v) Measures and practices contributing to or limiting the expansion of trade.

39. Up to the end of 1989, two sessions of the Group were devoted to shipping matters, the first one dealing primarily with definitional and statistical issues. The second of these sessions dealt with sectoral testing to consider the implications of a possible application of the principles of liberalization for the shipping sector. Up to now, no decision has been taken on the inclusion or otherwise of shipping under the multilateral framework agreement.

B. Port development

40. An Ad hoc Intergovernmental Group of Port Experts was convened in Geneva from 25 February to 5 March 1986, in response to decision 54 (XI) of the Committee on Shipping, to discuss solely port matters. The initiative generated a very positive reaction in the port community and many Governments sent high representatives with special responsibilities for port operations and management.

41. In its resolution 60 (XII), the Committee on Shipping took note of the report of the Ad hoc Intergovernmental Group of Port Experts and requested the secretariat to adapt its work programme in the light of the Group's recommendations. It also requested the secretariat to submit a summary report of its work in the ports field to the Committee at its fourteenth session and recommended that a meeting of the Intergovernmental Group of Port Experts be convened in accordance with the terms of reference to be established at that session of the Committee. In its resolution 61 (XIII) of 11 April 1988 the Committee on Shipping invited the Secretary-General of UNCTAD to convene, within available resources, not later than the third quarter of 1989, the Ad hoc Intergovernmental Group of Port Experts. Detailed terms of reference were established and, in particular, the Group was invited to examine four studies to be prepared by the secretariat in the following fields:

- Problems arising in setting up trans-shipment facilities in developing countries;
- Data processing in the domain of port operations and documentation;
- Maintenance of port equipment; and,
- The possibilities for regional co-operation in developing countries in the field of ports.

42. After the thirteenth session of the Committee on Shipping the UNCTAD secretariat made an assessment of the resources necessary to carry out the four studies required for the second session of the Intergovernmental Group of Port Experts, in parallel with the backstopping and technical support of its substantial technical assistance and training programmes in the port field. This included support to the TRAINMAR programme, which owing to the progressive phasing out of the UNDP financial contribution to the Geneva-based Central Team has required more technical inputs, particularly in the ports field. Since the financial constraints imposed upon the secretariat prevented the supplementing of resources available by sufficient consultancy provisions, the decision was then taken in early 1989 to postpone the convening of the Intergovernmental Group of Port Experts until September 1990.

43. The work carried out in the field of ports since the thirteenth session of the Committee on Shipping was shared between the three following interrelated activities: analytical work; technical assistance; and training.

44. A brief summary of the analytical work carried out in this field is presented below in order to keep the Committee on Shipping informed. It is suggested that discussions on the corresponding issues be postponed until the fifteenth session, to take into account recommendations made by the second session of the Intergovernmental Group of Port Experts. Technical assistance and training activities in Ports are summarized in Part D of this document.

(i) Problems arising in setting up trans-shipment facilities in developing countries (taking account of the interest of both ports and ship operators)

45. Trans-shipment is becoming a common feature of the movement of containerized cargo. The percentage of port traffic utilizing trans-shipment facilities and services has increased from a modest 5 per cent or less in the 1970s to about 10 per cent in ports such as Le Havre, Kobe or Kelang, 20-25 per cent in ports with better geographical position such as Hamburg or Piraeus and close to 90 per cent in specialized trans-shipment ports such as Algeciras or Fujairah.

46. Trans-shipment is viewed with some concern by authorities from countries off the main containerized routes which fear higher costs, decreased participation in shipping services, and redeployment of the shipping services in a way which does not correspond to the investment in ports and shipping already made by the country.

47. However, there are valid reasons to suppose that the developments towards hub ports and feeder services have important benefits to offer to all concerned, on condition that appropriate policies are drawn up to assure participation in and benefit from this development, at the appropriate level (ports, feeder services and main routes services).

48. A theoretical discussion of these issues has been already given in the report TD/B/C.4/293. A new report under preparation for the Ad hoc Intergovernemental Group of Port Experts will examine the new developments taking place in all regions, and will present specific conclusions reflecting, as requested, the points of view of all concerned.

(ii) Data processing in the domain of port operation and documentation

49. The study under preparation will provide guidelines for port managers on the use of computers within information systems to provide more complete, more timely and more accurate information. Various application areas are outlined. A procedure for acquiring computerized information systems is described. Port managers are advised to consider using or expanding the use of computers, particularly microcomputers in view of their low cost, user friendliness and standardization of hardware and software.

(iii) Port equipment maintenance

50. In this field of crucial importance to port management particularly in developing countries, the UNCTAD secretariat is collaborating with the World Bank and the Department of Trade and Industry of the United Kingdom to prepare reference and training material. The World Bank is preparing a technical paper on port maintenance and UNCTAD has developed a port training course on

port equipment management and maintenance policy. As requested, a report is being prepared to summarize the findings and the recommendations of the various initiatives launched in this field.

(iv) The possibilities for regional co-operation in developing countries in the field of ports

51. Previous studies carried out on this subject by the UNCTAD secretariat have identified specific areas of co-operation in the field of ports. To investigate this subject further, two questionnaires were sent, one to countries, the other to regional and international port associations. The replies have been numerous and are being analysed to assess the results achieved and present recommendations and practical guidelines for strengthening regional co-operation.

(v) Port organization and administration - An interesting experience in Morocco

52. The Intergovernmental Group of Port Experts also recommended that several themes be studied by the secretariat, including port organization and administration, wherever sufficient resources are available.

53. The secretariat is executing a technical assistance project in Morocco financed partly by UNDP and partly by the local authorities. In view of the results achieved so far in the implementation of a new port policy based on the decentralization of responsibilities, and the implementation of modern managerial concepts and tools, the secretariat has suggested that the Government of Morocco may wish to share its experience since it was estimated to be of great interest to other ports in developing countries (see document UNCTAD/SHIP/627).

(vi) Monographs on port management

54. Resolution 35 (IX) of the Committee on Shipping recommended the production by the UNCTAD secretariat, in collaboration with the International Association of Ports and Harbors (IAPH) of a series of monographs covering various aspects of port management and operations specifically oriented to the needs of port management in developing countries.

55. So far seven monographs have already been issued. Topics selected have been: planning land use in port areas; equipment maintenance; operations planning; container terminal pavement; port productivity; and shed management. A supplement to the monograph on container terminal pavement was finalized in 1989, and others on multi-purpose port terminal and equipment selection are envisaged.

(vii) Other activities

56. As recommended by the UNCTAD Ad hoc Intergovernmental Group of Port Experts, a port news-letter is issued every year to improve the dissemination of port information of the UNCTAD secretariat's work in the field of research training and advisory services. The established network system for distribution and the news-letter are working very well as indicated by the positive feedback and requests for publications received by the secretariat.

C. International maritime legislation

1. Joint UNCTAD/IMO intergovernmental group of experts on maritime liens and mortgages and related subjects

57. Further to resolution 6 (XI) of the Working Group on International Shipping Legislation (WGISL), endorsed by the Trade and Development Board at its thirty-second session and by the IMO Council at its fifty-sixth session, the Joint Intergovernmental Group held six sessions, alternately in Geneva and London, using the time and resources otherwise allocated to the Working Group on International Shipping Legislation of UNCTAD and the Legal Committee of IMO. The sixth session was held in London from 25 to 29 September 1989, during which the Joint Group completed the final reading of the draft provisions for a convention on maritime liens and mortgages. The Joint Group decided that the draft convention was sufficiently developed for submission to a diplomatic conference for adoption. It therefore recommended "to the UNCTAD Committee on Shipping and the IMO Legal Committee to consider favourably in the light of the useful work achieved by the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, the convening of a diplomatic conference on the review of the draft Maritime Liens and Mortgages Convention so as to allow the UNCTAD Trade and Development Board and the IMO Council to suggest such a conference to the relevant United Nations bodies" (TD/B/C.4/AC.8/27, para. 16).

58. During its sixth session the Joint Group also held an exchange of views on the subject of arrest, which had been included in its mandate by resolution 6 (XI) of the WGISL, and it was agreed that, in view of the close interlink between the 1952 Convention on Arrest of Seagoing Ships and a future Convention on Maritime Liens and Mortgages, any further work concerning the review of the Arrest Convention had to be postponed until after the adoption of the Convention on Maritime Liens and Mortgages by a diplomatic conference. Therefore, with regard to arrest, the Joint Group recommended "that consideration of any further work be postponed until after the adoption of the final text of the Convention on Maritime Liens and Mortgages by a diplomatic conference". The Joint Group further recommended "that the relevant bodies of UNCTAD and IMO consider making provision for further meetings of the Joint Group, in the light of the results of the diplomatic conference" (TD/B/C.4/AC.8/27, para. 16).

59. The final report on the work of the Joint Group including its recommendations and the text of the draft articles for a Convention on Maritime Liens and Mortgages are contained in document TD/B/C.4/AC.8/27 (JIGE(VI)/8).

2. Working Group on International Shipping Legislation, twelfth session

60. The Committee on Shipping at its thirteenth session, by resolution 61 (XIII), having urged the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects to complete its work during 1989, approved "the convening of the twelfth session of the Working Group on International Shipping Legislation to be scheduled in the latter part of 1989 to take up the subject of charter-parties". However, as the necessary documentation could not be completed in time for a meeting of

the WGISL in 1989 due to the heavy workload of the Maritime Legislation Section and reduction in staff resources, the twelfth session of the WGISL was postoponed until October 1990 to consider the subject of charter-parties.

3. Maritime fraud

(a) Maritime Fraud Prevention Exchange (renamed Maritime Advisory Exchange) Progress report

61. By resolution 61 (XIII), the Committee on Shipping recommended "to Governments of States members of UNCTAD to urge the relevant commercial parties to utilize the services to be provided by the Maritime Fraud Prevention Exchange (MFPE), once established, as a means of combating maritime fraud". The Committee also invited "States members of UNCTAD and interested commercial parties to inform the UNCTAD secretariat of the effectiveness and positive contribution of the MFPE in combating maritime fraud". It further requested "the UNCTAD secretariat to take appropriate measures to promote the MFPE, to monitor its activities, and to report thereon to the Committee on Shipping".

62. It may be recalled that the Maritime Fraud Prevention Exchange, which was subsequently renamed the Maritime Advisory Exchange (MAE), was established at the initiative and request of UNCTAD by private sector organizations, namely the Baltic and International Maritime Council, the International Chamber of Commerce and Lloyd's of London Press Limited. The establishment of the MAE was aimed at improving the availability and dissemination of shipping information by providing a focal point through which all information relevant to combating maritime fraud could be obtained.

63. The MAE, which is located in London, became operational on 1 December 1988. This was brought to the attention of States members of UNCTAD by the Secretary-General's note dated 15 December 1988. A leaflet explaining the operational mechanism of the MAE, issued by its founder members, was subsequently circulated to the Governments and interested commercial parties by the secretariat.

64. The UNCTAD secretariat has promoted the MAE through issuing press releases and by explaining its objectives and activities in various seminars and training programmes. A further note has been sent by the Secretary-General to States members of UNCTAD on 16 November 1989 requesting them to inform the secretariat of the extent to which the services of the MAE had been used by the relevant commercial parties and of its effectiveness and positive contribution in combating maritime fraud.

65. This enquiry showed rather limited use of the services provided by the MAE. A view, however, was expressed by some respondants to the secretariat's enquiry, that the MAE provided a useful and comprehensive source of information to assist commercial interests in combating maritime fraud, and therefore, its services should be continued. The secretariat would like to express its sincere thanks and appreciation to the Founder members of the MAE and to all those who have made it possible to institutionalize the system. Further information regarding the working of the MAE based on a report by the Trustees is contained in the annex to this report.

(b) Sea Waybills

66. Resolution 61 (XIII) further requested "the UNCTAD secretariat to continue monitoring the work on the subject of sea waybills, in both liner and tramp shipping, being carried out by the relevant international organizations and to report on the progress made to the Committee on Shipping".

67. The use of sea waybills, whenever a document of title is not required, is being promoted by various international organizations in an effort to reduce the occurrence of documentary fraud associated with the use of negotiable bills of lading. These organizations include the Baltic and International Maritime Council (BIMCO), the Comité Maritime International (CMI), UNCTAD/FALPRO and ECE Working Party on Facilitation of International Trade Procedures.

68. Recent developments in this area included the issuance of the UN/FAO World Food Programme Non-Negotiable Waybill, Code Name "Worldfoodwaybill", by BIMCO and the formulation of a set of Uniform Rules by the CMI. The CMI Sub-Committee on Sea Waybills completed its work in drafting the "CMI Uniform Rules for Sea Waybills". The Rules will be submitted for adoption to the CMI Conference in Paris in June 1990.

4. Treatment of merchant vessels in ports at the regional level

69. The Committee on Shipping, in its resolution 61 (XIII), called upon "States members of UNCTAD to inform the UNCTAD secretariat of the actual commercial and economic consequences they have noted for their merchant ships as a result of port State control at regional level". It further requested the secretariat "to inform the Committee on Shipping of any such communication received".

70. Further to this resolution, the secretariat sent a note to all States members of UNCTAD to which seven replies were received. These communications indicated that such port State control had no adverse commercial and economic effects on their merchant ships.

71. However it may be useful to note that, according to the annual report of the Secretariat of the Memorandum of Understanding on Port State Control during 1988, 11,224 inspections were carried out on 8,382 different ships of 112 flag States using the ports of 14 countries which are parties to the Memorandum. The number of ships that had to be detained or delayed due to serious deficiencies was 295 compared with 280 in 1987. The inspection rate for 1988 was calculated at 18.2 per cent of the ships entering the ports of the countries participating in the Memorandum.

D. Technical co-operation and training

1. Volume of the programme

72. The volume of UNCTAD's technical co-operation and training activities continued to increase in 1988 and 1989. Project expenditure during this

biennium totalled $6.8 million compared to $6 million in the two-year period 1986/87. At the end of 1989 a total of 46 projects were being executed by the Shipping Division consisting of:

10 interregional projects

17 regional projects (11 in Africa, 1 in Asia, 3 in Latin America and 2 in Arab States)

19 national projects (12 in Africa, 2 in Asia, 4 in Latin America, and 1 in Arab States)

2. Main features of the programme

(a) Training

73. Training continued to be a major feature of the Shipping Division's Technical Co-operation and Training Programme. In addition to the conduct of ad hoc seminars, on such subjects as Container Terminal Management (in collaboration with Antwerp Port Engineering and Consulting) and Financial Management and Pricing Policy (in collaboration with the Port of Le Havre), the secretariat continued to develop and promote its two programmes for the local training of management staff in developing countries - TRAINMAR and Improving Port Performance (IPP). It also initiated a new programme to better facilitate on-the-job training - JOBMAR.

74. In 1988/89 two IPP training packages were in regular use: IPP-1 for the management of general cargo operations, and IPP-2 for container terminal development policy. IPP-1 is now conducted exclusively by trainers from developing countries - either in their own countries or in others by special co-operation arrangements. IPP-2, on the other hand, is conducted by only a small number of specially qualified trainers. This package may be used both for the training of senior managers and as an appreciation seminar for top decision makers. In addition to its use for training purposes, it was used during 1988/89, as in 1987, also as a framework within which individual countries which were facing major problems with container terminal performance could examine these problems. Progress has been made with developing two new packages - IPP-3 for equipment management and IPP-4 for equipment procurement - the first of which was given a final validation in Jamaica in December 1989. Linked in with these packages, a set of written and audiovisual materials on the characteristics of container handling equipment were published and made available for a nominal payment.

75. The TRAINMAR programme, which has as its objective the reinforcement of local training activities through the provision of pedagogic skills, enforcement of professional standards and the encouragement of co-operation between centres, has continued to expand. In addition to the 22 centres already co-operating on a full member basis, new centres in Africa, Latin America and the Middle East started to co-operate through association with existing centres. A total of 42 centres were co-operating with TRAINMAR during 1989. The principle of regional networks was reinforced and, at a General Meeting held in Bremen in August 1988, the basis for a permanent system of co-operation was discussed. This meeting was attended by 60 delegates from outside the host country, representing 41 countries. Two regions undertook to take steps towards establishing permanent network

arrangements for co-operation. At the end of 1988 a new regional programme was established in the Caribbean with generous financial assistance from the Government of France. As well as the courses produced by members in the developing countries, new courses were contributed from Norway and the United States, while the secretariat contributed course materials on multimodal transport.

76. UNDP was the primary funding source for TRAINMAR activities during 1980-1989 and decided to organize an in-depth evaluation of the programme. This was conducted by independent consultants in the first half of 1989 and the findings were discussed at a round table meeting in Geneva in September 1989. It was clearly recognized that TRAINMAR was making an important contribution to the training of maritime managers and must be continued since no viable alternative existed. However, various areas for improvement were highlighted and an action plan was developed to ensure these improvements would be put into practice. UNCTAD will continue to give priority support to the TRAINMAR programme but external financial support will be essential for the continuation of regional and interregional co-operation between members.

77. Arrangements were completed for the introduction from 1 January 1989 of an on-the-job training initiative - JOBMAR. The objective of JOBMAR is to improve the practical management skills of middle/senior managers from developing countries by providing them with an opportunity to work "on the job" in countries with a more advanced maritime sector. JOBMAR emphasizes a "hands-on" approach to acquiring management skills. Experience, which cannot be simulated by traditional training methods, is gained by effectively dealing with business situations under actual commercial pressures and progress is measured by practical results. Several of the practical training assignments have been developed with the assistance of the Centre for Maritime Co-operation (CMC) of the International Chamber of Commerce (ICC).

78. The initial programme is being limited to 20-25 participants. By the end of 1989 a total of 32 candidates from more than a dozen countries had applied for a JOBMAR placement. Assignments have been with port authorities, shipping lines, industrial companies with in-house transport divisions, and ship brokers. Locations are equally varied with positions offered in Eastern and Western Europe, USSR, North America and the Far East. Funding is being sought for an extension of the JOBMAR project.

79. Training projects represent about 35 per cent of the Division's operational activities in budgetary terms.

(b) Support to the African transport sector

80. Another major activity during the past two years has been the implementation of the first phase of an important subregional transport project entitled "Transit traffic and support to the transport sector in Southern Africa".

This project consists of two components:

(a) Transit traffic: covering institutional and technical measures to facilitate the movement of transit cargo across international borders and thus stimulate transit trade; and,

(b) Support to the transport sector: dealing with measures to increase the physical capacity of transport networks through the introduction of modern data management techniques which permit much closer monitoring of cargo movements.

81. The most important feature of component (b) - which is being handled by the Shipping Division - is the development of an Advanced Cargo Information System (ACIS). This is a system making available to all transport operators information on cargo in advance of that cargo reaching any interface.

82. Implementation of ACIS was started at the beginning of 1989. The present situation is as follows. Several cargo tracking modules have been developed. The railway tracker is now fully operational on the Malawi Railway network, it is in a testing phase on the Tanzania/Zambia railway and is currently being introduced into Zambia railways (SNCZ) and Mozambique railways Northern corridor. The tracker on lake services is being tested on Lake Malawi and the cargo road tracker is currently being developed for testing in West Africa. Similarly the module for the electronic transfer of manifests from shipping lines to ACIS entry port shore installations is being finalized and will be tested as a prototype in southern Africa early in 1990. Finally, computer-assisted training is being provided in the form of tutorials for all the modes concerned. By mid-1990 a pilot project involving the United Republic of Tanzania, Zambia and Malawi is expected to be working. This will allow all operators free access to the system so that they can know in advance the exact situation of their cargo as it moves along the various transport routes (see also TD/B/C.4/328, paras. 46-47).

83. A similar project for West and Central Africa started towards the end of 1989 and a third project, for Eastern Africa has been approved by UNDP to become operational in 1990. These latter projects will both benefit from the development work carried out and experience in implementation gained under the southern Africa project.

84. The portions of the above transit corridor projects executed by the Shipping Division represented about 30 per cent of the Division's operational activities in 1988/89. As soon as the testing phase of ACIS is successfully completed, further activities in other regions can be envisaged.

(c) Regional and national projects

85. Finally there were some 16 other regional and national projects varying in size from a few thousand dollars to several hundred thousand dollars executed by the Shipping Division during the two-year period. Among the more important regional projects were a study on the harmonization of port tariff structures and cost accounting in West Africa, assistance to the Ministerial Conference of West and Central African States on Maritime Transport (MINCONMAR) to produce guidelines for the harmonization and modernization of the maritime legislation of member countries, assistance to East African countries, through the Intergovernmental Standing Committee on Shipping (ISCOS), on protecting shippers' interests, and assistance to African land-locked countries in formulating shipping policy. The Shipping Division is also co-operating with the University of Trieste (ISTIEE - Transport Study Institute) of Italy in promoting the development of shippers' organizations in member countries of the Southern Africa Development Co-ordination Conference (SADCC).

86. National projects included advice on port planning and operations to the Governments of Djibouti, Panama, Sri Lanka and Sao Tomé and Principe; assistance in port administration to the Government of Malawi; multimodal transport projects in Benin and Ethiopia; advice on updating the maritime code in Ethiopia, and projects to assist in the re-organization of the transport sector in Cameroon and Côte d'Ivoire.

87. The United Nations Development Programme provided 80 per cent of the funding for the above operational activities. Contributions were also received from the European Economic Community, the Governments of Belgium, France, the Netherlands, Norway, Sweden, United States of America, USSR, and from the recipient countries themselves. Fuller details are contained in document TD/B/WP/68 "Review of the Technical Assistance Activities of UNCTAD".

3. Evaluation of the technical co-operation programme

88. Resolution 61 (XIII), paragraph 20 of the Committee on Shipping "Urges the UNCTAD secretariat to submit to the fourteenth session of the Committee a comprehensive evaluation of the technical assistance programme provided by UNCTAD in the field of shipping, ports and multimodal transport ..." This evaluation was carried out in 1989 by UNCTAD's Programme Co-ordination and Evaluation Unit and the results are reported in document TD/B/C.4/331.

4. Sectoral support advisory service

89. This advisory service in shipping, ports and multimodal transport continued to be financed by UNDP and allowed the secretariat to respond to requests from developing countries for advice and assistance in identifying problems in the maritime sector and in the implementation of maritime policies. Activities were carried out through a series of short missions.

90. At the beginning of 1989 the sectoral support advisory service was re-initiated with the appointment of a new Principal Adviser providing a range of services covering the maritime field, trade facilitation and the use of computerized management information systems in the areas of trade, customs procedures and debt management. During 1989 this Principal Advisor devoted some 60 per cent of his time to maritime matters. He visited 18 countries where his work consisted of:

- Assisting UNDP and Governments in identifying problems in the maritime transport sector and formulating appropriate policies and programmes towards resolving such problems;

- Determining the needs of technical assistance and formulating draft project documents;

- Providing on-the-spot advice of a technical nature in carrying out policy formulation, administration and management functions in the maritime transport sector;

- Providing specialized technical guidance to UNCTAD field experts

- Assessing project performance;

- Assisting in course development and delivery; and,

- Providing information and advice on Maritime Training Programmes (TRAINMAR, JOBMAR and IPP).

91. In carrying out these missions, attention was focused on making Governments and UNDP Resident Representatives aware of how similar problems were being tackled and resolved in other countries, regions and subregions. The transfer of experience relating to policy instruments and institutional and management devices from one country to another and from one region/subregion to another has been one of the principal aims of this Adviser's work programme. In the course of the missions, Governments and governmental agencies were also helped and encouraged to establish direct contacts with other Governments/governmental agencies with a view to bringing about a direct transfer of experience and increased co-operation and collaboration, at both commercial and policy levels, particularly in coping with the rapid technological and concomitant structural changes taking place within the shipping industry. The work programme has been increasingly directed towards achieving maritime transport development through subregional co-operation.

5. Seminars on the implications of international maritime instruments

92. Paragraph 25 of Committee on Shipping Resolution 60 (XIII) requests the secretariat to conduct, within extra-budgetary resources available to UNCTAD, symposia and senior management seminars on the implications of the international maritime instruments negotiated under the auspices of the United Nations which fall within the field of competence of UNCTAD.

(a) The United Nations Convention on a Code of Conduct for Liner Conferences

93. The Shipping Division and the Registrar for the Code have received a number of requests for advice on the implications of the Liner Code. Workshops in preparation for the Review Conference were conducted, in 1988, in the USSR, Republic of Korea, Ghana and Thailand. In 1988/89 the Registrar and members of the secretariat also made contributions to various regional and national workshops devoted, either wholly or in part, to the implementation of the Liner Code.

(b) The United Nations Convention on Transport of Goods by Sea (the Hamburg Rules) and the United Nations Convention on International Multimodal Transport of Goods

94. The implications of the above two legal instruments are discussed in the workshops on multimodal transport developed under the TRAINMAR programme and conducted regularly by staff of the Multimodal Transport Section. A total of 19 workshops were conducted in 1988/89. Fuller details are provided in paragraphs 43-61 of TD/B/C.4/323.

6. SHIPASSIST

95. The SHIPASSIST Directory was prepared by the UNCTAD secretariat to provide information to developing countries on the availability of technical assistance in shipping, ports and multimodal transport. The version issued

in March 1989 (UNCTAD/SHIP/196/Rev.2) provides details on technical assistance available from organizations in 24 countries and from 14 international organizations.

96. Since this latest version of the SHIPASSIST Directory was issued, no requests have been received by the secretariat. This does not necessarily mean that developing countries made no use of the information supplied since they were encouraged to contact donor countries and organizations directly. Nevertheless, unless there is some positive feedback on the use developing countries make of this publication, the Committee may decide that the Directory does not need to be re-issued.

III. CONSULTATIONS AND CO-OPERATION WITH OTHER UNITED NATIONS BODIES

97. The executive heads of ILO, IMO and UNCTAD recently decided to establish a joint working group whose terms of reference are:

- To review the present technical co-operation programmes of the three organizations in the field of port training; and,

- To identify areas for increased collaboration and possible joint action.

98. This Group met for the first time in May 1989 and agreed that changing technology over the last two decades has tended to render approaches to technical co-operation based upon narrow demarcation lines not particularly helpful - if, indeed, not obsolete. Developing countries need advice, assistance and training in all aspects of port management and operation and the three organizations between them have the necessary expertise to respond to developing countries' needs in this field. It was agreed that closer working arrangements among the three organizations would:

- Avoid wasteful duplication of effort;

- Ensure a more efficient utilization of the three organizations' scarce resources;

- Simplify the situation for developing countries which may be confused to see the three organizations involved in similar activities;

- Be welcomed by donors which would probably be more ready to finance technical co-operation programmes in which different parts of the United Nations system were actively collaborating; and,

- Permit the United Nations system to fulfil a more significant role in providing the technical assistance and training required under projects financed by the international banks.

99. A Joint Inspection Unit report issued in March 1989, which made an evaluative assessment of the technical co-operation activities of the IMO in relation to maritime training, also came up with a specific recommendation that ILO, IMO and UNCTAD should establish an inter-agency steering committee to more actively co-ordinate and exchange information and ideas on their maritime training programmes and plans. It may be that the terms of reference of the ILO/IMO/UNCTAD working group mentioned earlier will eventually be enlarged to cover all maritime training in line with this recommendation.

100. The UNCTAD secretariat welcomes these developments and opportunities were taken during the second half of 1989 to discuss specific proposals for joint projects with both ILO and IMO.

101. In the context of maritime legislation, close collaboration with IMO has been achieved by the establishment of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects. The Joint Group has successfully completed the preparation of the draft Convention on Maritime Liens and Mortgages (for further information, see paras. 57 to 59 of this report).

102. Consultations and co-operation with other United Nations organizations such as the regional commissions, UNIDO, UNCITRAL, etc., are featuring very prominently in the work of the secretariat. Consultations are regularly held in particular with ESCAP, ECA and EEC covering a very wide range of subjects. Co-operation on substantive issues has been practised on many subjects with ESCAP and EEC, to a lesser extent with ECA and the other regional commissions. The level of co-operation on substantive issues is basically determined by the available expertise in the various commissions. However, close co-operation with all commissions is exercised with regard to the execution of technical assistance and training projects.

103. Inputs have been made to the work of UNCITRAL and UNIDO. UNCTAD has provided UNIDO with some studies on issues related to the draft convention on Operators of Transport Terminals (OTT) and UNIDO was assisted in its research in trade in wood and wood products (see para. 33).

IV. FUTURE WORK

A. Shipping policy

1. Protection of shippers' interests

104. The principle that liner conferences should fix freight rates on the basis of consultations with shippers, as well as the need to provide acceptable evidence to justify rate increases, has generally been accepted in most liner trades. In practice, however, not all the subjects included in resolution 59 (XII) are being negotiated. It is therefore recommended that the problem of shipper/shipowners'consultations should continue to be monitored, and conferences which do not hold genuine consultations with shippers' organizations should be urged to do so. Where requested, shippers' organizations in developing countries should be given assistance in this regard.

105. The Committee on Shipping may wish to request the UNCTAD secretariat to continue to monitor developments in relation to the establishment and operation of effective consultation mechanisms between conferences and/or shipping lines and shippers' organizations and report to it periodically on this subject matter. It may further request the UNCTAD secretariat to assist developing countries, upon request, with the establishment and operation of representative shippers' organizations.

2. Development of world shipping

106. In spite of a considerable reduction in the overall imbalance situation between supply and demand during recent years, the Committee on Shipping may wish to request the UNCTAD secretariat to continue to monitor developments in world shipping in this respect and to pursue its efforts to provide relevant statistical information on this subject matter in the annual reviews of maritime transport and to improve the information provided.

3. United Nations Convention on Conditions for Registration of Ships

107. The Committee on Shipping may wish to request the UNCTAD secretariat to continue to provide, within existing resources, guidance upon request to Governments concerning the possible implementation of the Convention and to monitor progress made towards the ratification and implementation of the Convention or its provisions and to report periodically thereon to the Committee on Shipping.

4. United Nations Convention on a Code of Conduct for Liner Conferences

108. The Committee on Shipping may wish to request the UNCTAD secretariat to continue to provide guidance and assistance to developing countries with the implementation of the United Nations Convention on a Code of Conduct for Liner Conferences and in particular to update document UNCTAD/ST/SHIP/1 - Guidelines towards the application of the United Nations Convention on a Code of Conduct for Liner Conferences, taking into account recent and ongoing developments in world liner shipping and decisions which may be taken at the resumed session of the Review Conference.

5. Maritime transportation of selected commodities

109. The secretariat is keeping possibilities under review for other studies, referred to in resolution 61 (XIII), paragraph 1, which would be undertaken pursuant to specific requests from developing countries concerned in the light of changing circumstances in the relevant trades.

6. Trade in services

110. The Committee on Shipping may wish to express its views as regards the efforts at present being undertaken towards the liberalization of shipping services and/or as regards the possible inclusion of shipping services and related activities in the multilateral framework agreement.

111. The Committee may also wish to request the UNCTAD secretariat to keep developments in relation to trade in services as regards international shipping services and related activities under review and report to it on this subject matter, giving specific attention to the implications for the participation of developing countries in world shipping of the possible inclusion of the shipping sector in the multilateral framework agreement.

112. The Committee may further wish to request the secretariat to provide guidance and assistance to developing countries in their consideration of their position and actions to be taken in the context of international negotiations on trade in services where shipping is being considered.

B. Port development

113. The Committee on Shipping may wish to request the secretariat to pursue its activities in the three complementary fields of analytical work, technical assistance, and training, and decide to review more extensively the port activities of the UNCTAD secretariat at its fifteenth session, in light of the recommendations of the second session of the IGG on ports. It may also wish to provide guidance to the secretariat taking into account the changing roles of ports in the modern transport system.

C. International maritime legislation

114. In the field of maritime legislation, the work on the subject of charter parties will be continued within the programme of the Working Group on International Shipping Legislation, which is scheduled to meet in October 1990.

115. The work on maritime liens and mortgages will be pursued, as the Joint Group considered that the draft convention on maritime liens and mortages had been sufficiently developed for submission to a diplomatic conference for adoption. The Committee may therefore wish to endorse the recommendations of the Joint Group and to request the Trade and Development Board to recommend to the General Assembly the convening of a diplomatic conference for the adoption of the Draft Convention on Maritime Liens and Mortgages.

116. As regards the subject of arrest, any further work will be posponed until after the adoption of the final text of the Draft Convention on Maritime Liens and Mortgages where the governing bodies of UNCTAD and IMO will be requested to allocate further meeting time to the Joint Group for the necessary amendments of the 1952 Convention on Arrest of Ships.

117. Concerning the subjects of the Maritime Advisory Exchange, sea waybills and treatment of merchant vessels in ports at the regional level, further work may be carried out by the secretariat monitoring any development in these areas. The Committee may, therefore, wish to renew the secretariat's mandate regarding these subjects.

D. Technical co-operation and training

118. UNCTAD's technical co-operation and training activities, both overall and in the maritime field, have increased steadily over the past four years (see table below)

EVOLUTION OF THE UNCTAD TECHNICAL CO-OPERATION AND TRAINING PROGRAMME 1985-1989

(project expenditure in thousands of US dollars)

Year	UNCTAD total	Shipping	Percentage of total represented by Shipping
1985	7 158	1 771	24.7
1986	10 935	2 440	22.3
1987	11 799	3 548	30.1
1988	12 187	3 246	26.7
1989	18 356	3 612	19.7

119. The present volume of these activities places heavy demands on the staff of the Shipping Division who, since the decentralization of technical co-operation in 1988, are now called upon to manage all aspects of the various projects. Staff carry out these management and backstopping tasks in addition to their regular activities, i.e. conducting research, drafting reports and servicing intergovernmental meetings. Current experience indicates that the present workload represents the maximum the Division can cope with without jeopardizing the quality of its work. Unless an increased volume of technical co-operation activities is matched by a corresponding increase in staff resources, steps will need to be taken to limit these activities in the future.

120. The main criteria to be used in deciding whether or not the Shipping Division should handle a particular technical co-operation activity will be:

(a) The relevance of the activity to the Shipping Division's mandate;

(b) The availability of staff with the necessary technical expertise to effectively supervise the project; and,

(c) Whether UNCTAD is the most competent body to execute the project.

121. One of the main thrusts of the Shipping Division's technical co-operation programme in the 1990s is likely to be its contribution to the Second United Nations Transport and Communications Decade in Africa (1991-2000). The secretariat is participating in the work of the Inter-Agency Co-ordinating Committee which has already prepared the "Objectives, Strategies

and Guidelines for this Decade" and is likely to take a leading role in a sub-sectoral working group to be created for maritime transport, to include shipping, ports and multimodal transport.

122. In order to economize technical assistance activities and to contribute further to the effort of harmonizing shipping worldwide, a new type of intra-regional commission project, covering various subject matters such as port tariff rules, cargo tracking systems, etc., can be envisaged in the 1990s to be executed by regional commissions as well as by UNCTAD. The main objective of this type of project should be seen in the light of enhanced co-operation among regional commissions together with UNCTAD. Through these projects developing countries will benefit from the experiences of other regions and at the same time duplication of substantive work on the same subject in different regions will be minimized.

123. Another major objective will be the implementation of the new TRAINMAR action plan mentioned in paragraph 75. External financial assistance will be required for direct interim support to the growing regional TRAINMAR networks. The ultimate objective, however, is the establishment of technically and financially self-supporting conditions for these networks to ensure that they can carry out and further develop regional and national training programmes once external financial assistance comes to an end.

124. In the light of a growing globalization of various transport issues, co-operation between the United Nations organs should adapt itself to these development trends. Experience shows that in particular the development of co-operation between the regional commissions has been to a large extent neglected. In order to utilize scarce resources in a more efficient manner and to avoid duplication of activities, the Committee may wish to provide some guidance to the secretariat on action to be taken to improve co-operation between regional commissions taking into account the role UNCTAD can play in promoting co-operation.

ANNEX

The following brief report on the Maritime Advisory Exchange (MAE) is based on the information received from the trustees of the MAE.

A. BACKGROUND

Following an initiative by UNCTAD the Maritime Advisory Exchange was set up in order to provide the international maritime community, particularly in the developing countries, with a focal point of contact so that they could obtain information relevant to identifying and combating malpractice in the maritime industry.

The constituent bodies of the MAE were: Baltic and International Maritime Council (BIMCO); International Chamber of Commerce (ICC); Lloyd's of London Press Limited.

These three organizations agreed to make available to MAE inquirers their extensive databases and information sources. Inquiries were handled on behalf of the constituent bodies by the following operating organizations: BIMCO Services (for BIMCO); International Maritime Bureau (for ICC); Lloyd's Maritime Information Services (for Lloyd's of London Press Limited).

The central inquiry point of the MAE was established at the International Chamber of Shipping (ICS) in London. The role of the central inquiry point was to direct each inquiry to the operating organization best able to respond to it.

B. PROMOTION

Promotion of the MAE was undertaken by the operating organizations. Such promotion included the following:

- A press release was issued (22/12/88) to international maritime publications and other media;

- MAE design and headed notepaper (for use by ICS inquiry point) were produced; and,

- A brochure was produced outlining the information services offered by the MAE, 15,400 copies of which were distributed worldwide by the trustees, operating companies, ICS and the UNCTAD secretariat.

C. INQUIRIES RECEIVED

As at the end of February 1990, the total number of inquiries received was 27. Some of the inquiries received were from countries of Group B while the majority were from Asian countries of the Group of 77. These figures do not include inquiries sent direct to operating companies that could not be identified as resulting from MAE promotion.

D. RECOMMENDATIONS

The financial support of the European Economic Community since 1987, when the MAE was first initiated, has enabled the establishment and functioning of the MAE (for which the trustees of the MAE and the UNCTAD secretariat wish to express their sincere appreciation).

The utilization by the international community of the services provided by the MAE has been rather limited. It is, however, acknowledged by the Board of Trustees of the MAE that the limited promotion caused by scarce resources has made effective marketing of the MAE difficult. The Board of Trustees, therefore, consider that only with full-time managerial resources and wider promotion, necessitating an annual budget in the region of £400,000 as originally envisaged can the MAE reach its full potential.

The Board of Trustees of the Maritime Advisory Exchange is prepared to continue its services to international trade, provided that sufficient operational funding is made available.

The Board of Trustees therefore recommends:

- "that the Committee on Shipping reviews its considerations which prompted the recommendation to establish the Maritime Advisory Exchange.

- that Governments supporting the continued operation of the Maritime Advisory Exchange be invited to provide the necessary operational funds."

Notes

1/ See TD/B(XXXV)/SC.1/CRP.1.

2/ An analysis of maritime transport issues is also included in a recent OECD publication, "Trade in Services and Developing Countries" (Ref. 2289011-ISBN 92-64-13278-3).

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TRADE AND DEVELOPMENT BOARD
Committee on Shipping

REPORT OF THE JOINT UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS ON ITS SIXTH SESSION

held at the Headquarters of IMO, London
from 25 to 29 September 1989

The attached report (JIGE(VI)/7)*/ has been prepared on the sixth session of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects.

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*/ Also circulated by IMO under the symbol LEG/MLM/26.

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28 The observer for the International Association of Ports and Harbors (IAPH) expressed concern regarding the deletion of the liens granted by the existing conventions in respect of port, harbour and pilotage dues. The deletion would be against the interests of the entire maritime community. It would entail additional risks regarding the arrest of ships before they left ports.

29 In the light of these discussions, the Sessional Group decided to retain paragraph 1 of the basic text without any change. As to paragraph 2, the Sessional Group agreed to keep the proposal of the United States, which read: "for which compensation is payable to the claimants pursuant to", subject to appropriate drafting.

ARTICLE 5

Priority of maritime liens

30 One delegation stated that its national legislation granted top priority for claims for crews wages. For this reason, its country would not be able to ratify the convention if paragraph 2 remained in its present form. The delegation explained that, in accordance with its national law, claims for wages should be given priority over the claims for salvage, even in the case mentioned in this paragraph.

ARTICLE 6

Other liens

31 The Sessional Group considered a proposal from the United States delegation to substitute a text of this article to create a specific maritime lien for marine suppliers (paragraph 1), which would not, however, have priority over mortgages or hypothèques. The new article would also retain the provision permitting States Parties to create other national maritime liens, which other liens would rank below the maritime supply liens (JIGE(VI)/4).

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Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects

Sixth session

London, 25-29 September 1989

REPORT OF THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS ON ITS SIXTH SESSION

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INTRODUCTION

1 The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD), held its sixth session at the Headquarters of IMO in London from 25 to 29 September 1989.

2 During the session, two plenary meetings were held. The present report reflects the proceedings at those meetings. A report summing up the discussions of the Sessional Group is annexed to this report.

Opening statements

3 The Assistant Secretary-General of IMO, on behalf of the Secretary-General, stated that the progress achieved by the Group so far and the spirit of harmony and co-operation in which the Group had carried out its work, confirmed the hope and expectations with which the governing bodies of IMO and UNCTAD had when they established the Joint Group of Experts. He expressed his confidence that the Group would, at the end of its session, be in a position to present a suitably positive report to the relevant bodies of IMO and UNCTAD.

4 The Deputy Director of the Shipping Division of UNCTAD also referred to the very positive and constructive results achieved during the past sessions of the Group. He pointed out that although the work of the Group had been so far confined to a review of the maritime liens and mortgages in order to produce a draft convention, the terms of reference also included consideration of the Arrest Convention of 1952. He therefore suggested that the Group might wish to require the two governing bodies of UNCTAD and IMO to allocate further time and resources to the Group to carry out the necessary work on the subject of arrest.

Chapter I

PROCEEDINGS AT THE CLOSING PLENARY MEETING

A Approval of the report of the Sessional Group

5 At its closing plenary meeting, on 29 September 1989, the Joint Intergovernmental Group of Experts approved the report on the work of the Sessional Group, as contained in document JIGE(VI)/WP.2/Add.1, with some amendments (for the final text, see the annex to this report).

B Approval of the final report of the Joint Intergovernmental Group on its work to the Committee on Shipping of UNCTAD and the Council of IMO

6 At the same meeting, the Joint Intergovernmental Group of Experts approved the final report on the work of the Joint Group, as contained in document JIGE(VI)/WP.3

Chapter II

ORGANIZATIONAL MATTERS

A Opening of the session

7 The sixth session of the Joint Intergovernmental Group of Experts was opened by Mr. G.G. Ivanov (USSR), Chairman of the Group, on 25 September 1989. At the first plenary meeting, opening statements were made by the Assistant Secretary-General of IMO and the Deputy Director of the Shipping Division of UNCTAD (see paragraphs 3 and 4 above).

B Adoption of the agenda and organization of work (agenda item 1)

8 At its first plenary meeting, on 25 September 1989, the Joint Intergovernmental Group of Experts adopted the provisional agenda drawn up by the Secretariats of IMO and UNCTAD in document JIGE(VI)/1. This had been issued by IMO under cover of document LEG/MLM/20 and by UNCTAD

under cover of document TD/B/C.4/AC.8/20. The agenda for the session, as adopted, was as follows:

1. Adoption of the agenda and organization of work

2. Final reading of the draft articles for a Convention on Maritime Liens and Mortgages

3. Consideration of the scope of the revision of the International Convention Relating to the Arrest of Seagoing Ships signed at Brussels, on 10 May 1952

4. Consideration of the final report of the Joint Intergovernmental Group on its work to the Committee on Shipping of UNCTAD and the Council of IMO

5. Other business

6. Adoption of the report of the session.

9 At the same meeting, the Joint Intergovernmental Group decided to continue with the substantive work, as set out in agenda items 2, 3 and 4, in a Sessional Group under the chairmanship of the Chairman of the Intergovernmental Group.

C Membership and attendance

10 The following States Members of IMO and UNCTAD participated in the session: Argentina, Bahrain, Bangladesh, Bolivia, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, Ethiopia, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, Hungary, India, Indonesia, the Islamic Republic of Iran, Iraq, Italy, Japan, Kuwait, Liberia, Mexico, the Netherlands, Nigeria, Norway, Poland, Portugal, the Republic of Korea, Saudi Arabia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, and Zaire.

11 The Associate Member of IMO, Hong Kong, participated in the session.

12 Observers from the following intergovernmental organizations were represented at the session:

ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
INTERNATIONAL OIL POLLUTION COMPENSATION FUND

13 The following non-governmental organizations were represented at the session:

INTERNATIONAL CHAMBER OF SHIPPING
INTERNATIONAL UNION OF MARINE INSURANCE
INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS
INTERNATIONAL MARITIME COMMITTEE
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES
INTERNATIONAL SHIPOWNERS' ASSOCIATION
INSTITUTE OF INTERNATIONAL CONTAINER LESSORS
INTERNATIONAL SHIP SUPPLIERS ASSOCIATION
HAZARDOUS MATERIALS ADVISORY COUNCIL

D Adoption of the report of the session

14 Also, at its closing meeting, the Joint Intergovernmental Group adopted the draft report on its sixth session (JIGE(VI)/WP.1). It was understood that the proceedings at the closing meeting would be reflected in the final version of this report.

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ANNEX

REPORT ON THE WORK OF THE SESSIONAL GROUP

INTRODUCTION

1 The Sessional Group noted that it had been requested by the Plenary of the Joint Intergovernmental Group of Experts to deal with three agenda items, namely:

- the final reading of the draft articles for a Convention on Maritime Liens and Mortgages (agenda item 2);

- consideration of the scope of the revision of the International Convention Relating to the Arrest of Seagoing Ships signed at Brussels, on 10 May 1952 (agenda item 3); and

- consideration of the final report of the Joint Intergovernmental Group on its work to the Committee on Shipping of UNCTAD and the Council of IMO (agenda item 4).

Item 2 - Final reading of the draft articles for a Convention on Maritime Liens and Mortgages

2 The Sessional Group based its discussions on a revised set of draft articles prepared by the Chairman of the Joint Intergovernmental Group with the assistance of the two Secretariats, and a set of draft final clauses prepared by the two Secretariats, presented in document JIGE(VI)/2. That document had been issued by IMO under cover of document LEG/MLM/21 and by UNCTAD under cover of document TD/B/C.4/AC.8/21.

3 The Sessional Group also had before it documents containing proposals by the delegation of the United States in document JIGE(VI)/4, issued by IMO under cover of document LEG/MLM/23 and by UNCTAD under cover of

TD/B/C.4/AC.8/23. Also before the Sessional Group were submissions by the International Chamber of Shipping (ICS) and the International Association of Classification Societies (IACS).

ARTICLE 1

Recognition and enforcement of mortgages, "hypothèques" and charges

4 One delegation expressed concern as to the lack of definition of the words "mortgage" and "hypothèque". The delegation stated that its national legislation did not distinguish between the two terms, and it was, therefore, suggested that clear definitions for the words "mortgage" and "hypothèque" be included in the Convention, in order to avoid any misunderstanding.

5 The Chairman recalled that an attempt had been made during the previous sessions of the Joint Group to produce definitions of certain terms used in the draft convention. Indeed a small working group had been set up for this purpose, but the working group found it impossible to prepare definitions acceptable in all jurisdictions. In the view of the Chairman, any further attempt at this stage to formulate definitions was not likely to be more successful.

6 One delegation recalled that it had, at the previous session, put forward a proposal to overcome problems which could arise under its national law under which mortgages on a ship belonging to a company, in addition to registration under the merchant shipping legislation, had to be registered under company law. The proposal (see JIGE(V)/2/Add.3) would permit States to make a reservation regarding the application of their national law in respect of the registration of charges in their companies' register.

7 The delegation indicated that it would revert to the matter at the the diplomatic conference.

ARTICLE 2

Ranking and effects of mortgages, "hypothèques", and charges

8 No comment was made in relation to this article.

ARTICLE 3

[Voluntary] change of ownership or registration

9 The Sessional Group gave consideration to the proposal submitted by the United States, as contained in document JIGE(VI)/4. Some delegations expressed support for the proposal and they noted that the proposal would, as stated by the United States delegation at its introduction, clarify the text of the article by focusing on the responsibilities of the State conducting deregistrations in paragraph 1, and addressing the responsibilities of the State conducting reregistration in paragraph 2.

10 The proposal, however, did not receive wide support. Most delegations felt that it was essential to retain the term "voluntary" in the title of the article so as to make it clear that other cases of change of registration were not covered by the article. It was further pointed out that a reference in the title to change of registration "between States Parties" would be inappropriate, since provisions of the article could apply to all cases of deregistration whether between States Parties or not. The use of the word "satisfied" in place of "deregistered" in paragraph 1 was not supported as it was considered to imply that the registrar or the authority supervising the forced sale would be in a position to ascertain that the claim was satisfied. It was pointed out that the term "deregistered" might not be very satisfactory, and it was suggested that the issue could be reconsidered by a drafting committee during the diplomatic conference. A suggestion was made to use the word "deleted" instead.

11 Many delegations objected to the proposal to delete subparagraphs (a) and (b) of paragraph 2. They felt that this would leave it unclear as to whether there had to be deregistration of the vessel from one register before it could be reregistered in another State. The purpose of the two subparagraphs was to prevent the possibility of the vessel being registered in two registers at the same time.

12 In the light of the lack of sufficient support for the proposal, the delegation of the United States withdrew its proposal, in order to expedite the work of the Joint Group.

13 One delegation suggested extending the application of article 3 to cases of deregistration of the ship by the National Maritime Administration, for example, on the grounds that the company owning the ship did not comply with certain basic requirements of national law. In this respect, the delegation referred to its national legislation which required the presence of the majority of nationals in the management of the shipowning company as a condition for granting the right to fly its flag. The delegation, therefore, proposed to amend the title and text of the first part of article 3(1) as follows:

"Change of ownership or registration

1. In any event that entails the deregistration of the vessel from the national register....".

14 However, this proposal was not discussed by the Sessional Group since it had not been submitted in accordance with the procedure previously agreed by the Group.

15 One delegation pointed out that if it were decided to retain the word "voluntary" in paragraph 1, a reference to article 11.3 would not be necessary in paragraph 2. It was, however, felt necessary to give consideration to the need for clarification to deal with the situation where a vessel is confiscated by a State authority.

16 One delegation stated that it would prefer the provision in the 1967 Convention, with a heading reading: "change of registration other than as a result of a forced sale".

17 The majority of delegations were in favour of the basic text of article 3, with deletions of brackets from the text. The Sessional Group, accordingly, decided to maintain the basic text and to remove all the brackets.

ARTICLE 4

Maritime liens

18 The Sessional Group gave consideration to the proposal submitted by the delegation of the United States, contained in document JIGE(VI)/4, regarding this article. With regard to paragraph 1, the United States proposal was to reintroduce a maritime lien in respect of claims for "general average", to rank with salvage, and to delete the restriction of tort claims to claims "other than loss of or damage to cargo, containers and passengers' effects carried on the vessel". With respect to paragraph 2, the United States proposal was to substitute the phrase "within the scope of application of" with the words "for which compensation is payable to the claimants pursuart to". The delegation stated that this was merely to clarify the meaning of the phrase.

19 Although some delegations supported the proposal to include a lien in respect of "general average" in paragraph 1, the overwhelming majority of delegations preferred to keep the basic text. They noted that the text represented a compromise which the Joint Group had agreed to accept in order to progress its work.

20 Some delegations pointed out that it was necessary to make it clear whether or not salvage claims referred to in subparagraph 1(c) would include not only the ordinary salvage award but also the special compensation payable under articles 13 and 14 of the 1989 Salvage Convention. It was agreed that provision might need to be reconsidered by the diplomatic conference in the light of the provisions of the new Salvage Convention.

21 One delegation stated that although paragraph 1 of article 4 established the order of priority of maritime claims, article 5(2) gave salvage claims priority over all maritime liens, including liens for crew wages, which had attached to the vessel prior to the time when the salvage operations had been performed. This delegation pointed out that this provision was not acceptable to its delegation as it was not in conformity with its national legislation.

22 As regards paragraph 2, most delegations felt that the proposal of the United States was in principle acceptable, but several delegations expressed concern over its drafting. These delegations stated that unless an acceptable drafting was provided, they would prefer to retain the present text of paragraph 2.

23 The Sessional Group also considered proposals submitted by the International Chamber of Shipping (ICS) and by the International Association of Classification Societies (IACS). The ICS proposal was to limit further the list of maritime liens by deleting claims for port, canal, and other waterway dues and pilotage dues (paragraph 1(d)), whilst the IACS suggested inclusion of a further maritime lien in respect of "services" rendered by classification societies.

24 Although some delegations supported the proposal submitted by the ICS to delete paragraph 1(d), most delegations felt that the present text should be retained. One delegation stated that the deletion of paragraph 1(d) would have serious financial implications for countries which provided canal and pilotage services. If the dues or fees for these services were not protected by having the status of maritime liens, some of these countries would be unable to accept the proposed new convention.

25 The observer for the International Shipowners Association (INSA) supported the proposal submitted by the ICS.

26 The proposal of IACS was supported by some delegations. However, the majority of delegations expressed preference to the present text. They noted that this text had been agreed at the previous session and they could not accept any further additions or deletions.

27 The observer for the Institute of International Container Lessors (IICL) stated that it was unnecessary to facilitate the building of ships in view of continued over-building. He supported the proposals made by the IACS and the delegation of the United States to amend paragraph 1(e) to remove the exclusion of loss or damage to cargoes, containers and passenger effects. They felt that these damages needed to be included and claims based on them should also have the protection of liens.

32 The delegation of the United States, in introducing its proposal, stated that such liens would provide an effective basis for the world-wide enforcement of legitimate claims without jeopardizing the security interests of preferred mortgagees whose claims would receive priority. In referring to the role of the marine suppliers, the delegation emphasized that, without the greater assurance of payment provided by the option of a maritime lien enforcement, they would no longer be willing to extend credit to vessel owners/operators, thus making vessel operation more difficult world-wide.

33 A proposal was also presented by the observer delegation of the International Chamber of Shipping to the effect that the term "maritime lien" should relate solely to maritime liens included in article 4(1) and that other liens granted under national law should not be referred to as "maritime liens" and should not travel with the ship. The ICS also stated that there should be no listing of other liens in article 6 (LEG/MLM/25).

34 Several delegations were of the view that the expression "maritime liens" should be restricted to only those liens in article 4, paragraph 1. In support of this position, reference was made to the fact that this expression does not appear in the corresponding text of either the 1926 or the 1967 Convention. It was pointed out that in the draft convention the expression "maritime liens" should be equally used only in relation to those liens included in article 4, paragraph 1. Accordingly, the liens referred to in article 6, being purely national in character, should not be referred to as "maritime liens".

35 Some delegations favoured the retention of the words "maritime liens" as in the basic text. In support of this position, it was stated that this text had been the result of a compromise reached during the fifth session of the Group. It was also pointed out that it was essential to keep the expression "maritime" in respect also of liens created by national law, in order to differentiate between those national liens which were of a maritime nature and other possible liens arising from obligations which were not directly connected with the operation of the ship. In this regard, reference was made to the relationship with the concept of "maritime claim" contained in the 1952 Arrest Convention.

36 Some delegations referred to the relationship between article 6 and article 7 which provided that maritime liens follow the vessel notwithstanding any change of ownership, of registration or of flag. In this connection, one delegation recalled the need for adopting a conflict of law provision which would enable the law applicable to be determined in each case. It was recalled that a proposal presented during the fifth session, in providing for reciprocity in respect of the recognition of maritime liens other than those referred to in article 4, represented a compromise in so far as it provided that the liens in question should be accepted by both the law of the flag State and the lex fori. Another delegation emphasized the need for such a provision in case the reference to "maritime lien" were to be retained in article 6.

37 In view of the differences of opinion, the Group decided that the words "maritime liens or" in the first line of the basic text should be kept between brackets.

38 The Group decided that the expressions "under national law" be deleted.

39 The observer for the International Ship Suppliers Association (ISSA) expressed regret at the fact that a lien for ship suppliers would not find a place either in article 4 or in article 6. He recalled that the fact had existed in the 1926 Convention which had achieved a far wider approval than the 1967 Convention which had ignored such a lien. He expressed his view that suppliers' credits towards a ship were worthy of the same protection as that offered by a maritime lien on account of the significance of the work, and he hoped that the position of ship suppliers could be reconsidered at the diplomatic conference.

ARTICLE 6bis

Rights of retention

40 The Sessional Group gave extensive consideration to this article. Diverging views were expressed on the justification and condition of its inclusion in the draft convention.

41 A number of delegations expressed the view that an article on rights of retention was not appropriate in the proposed convention and should be deleted. In this connection, they explained that the right of retention was a "de facto" situation with legal consequences based on the possession of the ship and, as such, not in the nature of a maritime lien.

42 One delegation, while noting the different approaches to right of retention as between civil law and common law jurisdictions, supported retention of article 6bis, stressing its importance in the national law of that delegation.

43 One delegation stated that a provision on rights of retention should be maintained in order to make it clear that a shipyard which was in possession of the ships would have a security for its claims against the shipowner.

44 However, some other delegations stated that although they were not happy with the inclusion of a provision on the right of retention, the current text was the result of a compromise reached during the fifth session of the Joint Group and, therefore, should be retained.

45 One delegation stated that the compromise intended to be achieved by the inclusion of article 6bis would only be acceptable if paragraph 2 could be deleted. This was because the paragraph appeared to impose unacceptable restrictions on the enforcement of the right of retention given in paragraph 1. In the opinion of this delegation, restrictions neutralized the essence of the right of retention. In support of this position, another delegation stated that the restrictions in paragraph 2 would impose a limitation on the sovereign right of a State to grant rights of retention in accordance with its national law. In the view of this delegation, the priority of the maritime liens in article 4.1. over the right of retention in article 6bis, could be safeguarded by including in the convention a provision stating that no right given by the national law of the vessel can restrict or prejudice the enforcement of the maritime liens in article 4, paragraph 1.

46 The Sessional Group also gave consideration to the proposal of the United States in JIGE(VI)/4, that paragraph 2 be carefully reviewed in order to overcome existing ambiguities and inconsistencies, as regards the relationship between rights of retention on the one hand and maritime liens, mortgages, hypothèques and other charges on the other hand.

47 One delegation was opposed to the inclusion of paragraph 2. The delegation was of the view that giving the maritime liens in article 4.1 priority over the rights of retention in article 6bis, paragraph 2, would discourage the shiprepairers from providing repair services on credit, and rather insist on payment in advance of any such repairs. Such a situation could prove to be extremely damaging for the shipping industry, particularly the industries of developing countries.

48 One delegation, which favoured the inclusion of a provision on right of retention, explained that the right of retention was of a totally different nature from maritime liens, mortgages or hypothèques. The delegation pointed out that the holder of the right of retention under article 6bis could not request a forced sale of the vessel and would not be in a position to participate in the sharing of the proceeds of a forced sale. The right of retention was not, therefore, intended to interfere in the rights of the holders of maritime liens and mortgages, but rather to provide some security to the repairer so long as he retained physical possession of the ship.

49 The observer for the CMI said that in certain jurisdictions the holder of a right of retention could refuse to surrender the possession of a ship unless his claim was first satisfied, even before the claims of holders of maritime liens and mortgages. Accordingly, the question whether the priority should be assigned to the maritime lien in article 4, paragraph 1, or to the holders of the right of retention was a matter of policy. He also explained that, in his opinion, article 11.2 appeared to subordinate the claims secured by a right of retention to the maritime liens in article 4.

50 In the light of these discussions, the Chairman suggested that in article 11, after paragraph 2, the following text be inserted as a new paragraph 3:

"3 If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claim of holders of maritime liens mentioned in article 4".

51 This text should be accompanied by the following consequential changes:

- present paragraph 3 would become paragraph 4;

- in paragraph 2, the sentence in the first brackets and the brackets around the last sentence should be deleted;

- in article 6bis, paragraph 2, the first sentence should be deleted.

52 Most delegations agreed that this proposal represented an important step forward towards the achievement of a compromise and deserved further consideration.

53 One delegation highlighted the importance of this proposal in so far as it made clear that, in all cases, only the forced sale could affect the priority attached to a right of retention. However, this delegation pointed out that further amendments were needed to avoid the unacceptable situation created by the fact that the holders of maritime liens mentioned in article 4(c),(d) and (e) would enjoy priority over the holder of a right of retention.

54 One delegation felt that the proposal for a new paragraph 3 in article 11 would be impractical since a shipyard would find it unacceptable to agree to undertake repair under the condition that the yard would obtain payment following a forced sale only after the claims secured by maritime liens, listed in article 4.1, had been satisfied.

55 There was general support for a proposal to delete the first sentence in article 6bis, paragraph 2. However, it was acknowledged that the proposal required further consideration.

56 In response to a comment by one delegation, the observer of the CMI indicated that the expressions "to the purchaser", referring to the person to whom the ship should be surrendered, could be better replaced by the words "to the appropriate authority". In this connection, he referred to the case in which the ship remains under the control of the former owner or is surrendered to a judicial authority or officer having custody.

57 In the light of these considerations, the Sessional Group agreed that article 6bis should remain in brackets.

ARTICLE 7

Characteristics of maritime liens

58 Many delegations felt that since no decision had yet been taken concerning the word "maritime" in article 6, it was appropriate to insert the term "set out in article 4" in brackets after the words "maritime liens" in line one of this article. This would make it clear that any maritime liens created by national law would not also travel with the vessel. Some delegations, however, expressed reservations concerning the insertion of such a reference to article 4, as they felt that all maritime liens, whether specified in article 4 or created by national law, should follow the vessel.

59 One delegation proposed to make a reference in article 7 to article 11 so as to make it clear that maritime liens would not survive a forced sale. This delegation, therefore, proposed to insert the term "subject to the provisions of article 11" at the beginning of the article. This proposal was supported by the majority of delegations.

60 In the light of the discussion, the Sessional Group decided to insert the words "set out in article 4" in brackets after the words "maritime liens". A final decision on the matter would depend on the decision taken in relation to article 6. The Sessional Group also agreed to add the words "subject to the provisions of article 11" at the beginning of article 7.

ARTICLE 8

Extinction of maritime liens by lapse of time

61 In discussing article 8, the Sessional Group gave consideration to the proposal submitted by the delegation of the United States, in document JIGE(VI)/4. This delegation explained that the proposal was to allow for a maximum two-year expiration period, provided that the State of registration was notified of the claim within the original period of one year. This delegation pointed out that this proposal was offered as a compromise between those preferring longer periods of limitation and those favouring a one-year period.

62 While the proposal to extend the period of validity of maritime liens to two years received some support, the majority of delegations considered that the period of one year was sufficient and should not be extended. Some delegations stated that the extension of the period of validity of maritime liens would result in an increase in the number of maritime liens attaching to a vessel.

63 Some delegations emphasized that the draft convention should not permit a situation where maritime liens would continue to exist even when the claims on which they were based had been extinguished. It was, therefore, proposed to clarify the matter by providing that, unless the claim was extinguished prior to a one-year period, maritime liens should continue to be valid during the period of one year.

64 Some delegations felt that the same period of validity should apply to the maritime liens set out in article 4 and those established by national legislations under article 6. They therefore proposed that a reference to article 6 be made in paragraph 1 of article 8. The majority of delegations, however, preferred to retain the present text of paragraph 1 as they did not consider it appropriate to regulate maritime liens, created by national law, by the proposed international convention.

65 The observer for the ICS supported the retention of the one-year period for the validity of maritime liens. The observer added that, in the interest of unification of maritime law, it was desirable to apply the same time limit to maritime liens specified in article 4 as well as to any maritime liens which might be created under national law.

66 The observer for the International Confederation of Free Trade Unions (ICFTU) proposed that consideration may be given to adopting the United States' proposal to extend the limitation period, at least in respect of claims for crew wages. The observer noted that the crew members would often be contracted for a period longer than one year and during that period they would not leave the vessel. Thus, they would not be in a position to exercise maritime liens to secure their claims.

67 Some delegations, however, pointed out that, under most national legislations, the period of validity of maritime liens for unpaid crew wages would commence to run only after they had left the vessel. These delegations suggested that this clarification might be made by appropriate drafting.

68 Many delegations pointed out that difficulties would arise with regard to the implementation of the proposal of the United States delegation, since no system of registration of maritime liens existed under legal systems.

69 With regard to the two alternative texts in brackets in paragraph 2, the majority of delegations preferred to retain the phrase in the first set of brackets as it included a reference to both "arrest" and "seizure" of the vessel. Some delegations, however, expressed preference for the second alternative text. One of these delegations proposed that an addition should be made to deal with the case where the lienor was legally prevented from bringing an action to enforce his claim.

70 In the light of the above discussion, the Sessional Group decided to retain the text of paragraph 1 of the basic text unchanged. As to paragraph 2, it decided to keep the first alternative text and to delete the second alternative in brackets.

ARTICLE 9

Assignment and subrogation

71 Some delegations felt that there was no direct relationship between articles 8 and 9 and therefore the decision to restrict the application of article 8 to maritime liens, set out in article 4, did not mean that the same approach had to be adopted in respect of article 9. Some delegations, however, felt that the most appropriate solution in relation to article 9 was to retain a reference only to article 4 and to delete the words "and in article 6" and "this Convention" from the article. These delegations stated that any other approach would mean setting a general rule as regards assignment and subrogation of national liens, and this would give rise to further problems and difficulties. One delegation pointed out that the problems faced in relation to articles 7, 8 and 9 were due to the fact that the word "maritime" had been retained in article 6. This delegation emphasized that since a final decision had not yet been taken in respect of article 6, the best solution would be to refer only to article 4 in article 9, thus making it clear that maritime liens created under national law should not be subject to regulation under the Convention.

72 The Sessional Group decided to retain a reference to article 4 only, and to delete the words "and in article 6" and "this Convention" from the article.

ARTICLE 10

Notice of forced sale

73 The Sessional Group considered the proposal by the delegation of the United States to substitute the text of this article with the text proposed in document JIGE(VI)/4.

74 The delegation of the United States explained that the purpose of its proposal was to make less rigid the requirements for the giving of the notice of forced sale of a ship by incorporating a more flexible procedure which would be equally effective in ensuring adequate notice. The delegation

emphasized that the option to waive the notice of forced sale would enable forced sales to be expedited, and that this would prevent the wasting of assets and excessive preservation costs.

75 While most delegations expressed general support for this proposal, several observations on drafting were made in respect of each paragraph. Certain questions were also raised with regard to substance.

76 One delegation suggested that an addition be made to paragraph 1, subparagraph (a), providing for an obligation on the authority in charge of the register in the State of registration to reply to the notice of forced sale by providing the authority which had issued the notice of forced sale with the pertinent information regarding registered mortgages, "hypothèques" or other charges on the ship. In the opinion of this delegation, this information was essential for the authority in charge of the forced sale to ensure the protection of the interests of the respective claimants.

77 Some delegations suggested the deletion of paragraph 2, subparagraph (b). In their opinion, the inclusion in the notice of forced sale of any particulars, other than the time and place, should be left to be regulated by national law. Other delegations felt that, regardless of whether or not paragraph 2(b) were deleted, it was essential that a notice of forced sale indicated clearly the authorities which would be conducting the forced sale and the name of the creditor requesting the forced sale.

78 Several drafting corrections were suggested in respect of paragraph 3. It was proposed that the words "in addition to any notice of publication" be deleted, bearing in mind that the requirement of publication was entirely governed by the national law. Alternatively, it was proposed that the words "if required by national law" be included after the word "publication". This proposal was accepted by the Sessional Group. The Group also agreed to a proposal that the word "any" be inserted before the word "electronic" to make clear that the requirement of confirmation of receipt was not related to receipted post, but by electronic or other appropriate means having the same effect.

79 The observer for the International Confederations of Free Trade Unions (ICFTU) emphasized that the requirement of publication was essential in order to enable the seamen to contact the authorities in charge of the forced sale. He was in favour of the specific mention of notice by publication as proposed by the delegation of the United States. The specific problems concerning the notification to lien holders for wages ought to be dealt with by the diplomatic conference.

80 The following text was therefore proposed for paragraph 3:

> "3 In addition to any notice by publication which may be required by the national law of the State conducting the forced sale, the notice specified in paragraph (2) of this article shall be written and may be given by receipted post or by any electronic or other appropriate means which provide confirmation of receipt".

81 Some delegations opposed the suggestion that the requirement for notification might be waived. These delegations therefore proposed to delete paragraph 4 in the proposal of the delegation of the United States. They appreciated that the purpose of the suggestion was to avoid unnecessary formalities, but they pointed out that the formalities in this context were necessary to ensure that there was no uncertainty regarding any waivers which might be made.

82 Some other delegations favoured the retention of this paragraph because it was flexible and could help to expedite a forced sale. It was noted, furthermore, that the waiver was only possible if permitted by the national law of the forum involved.

83 In the light of the views expressed, the Sessional Group agreed to adopt the following substitute text for article 10 proposed by the United States, keeping in brackets paragraph 2, subparagraph (b) and paragraph 4:

"Article 10

Notice of forced sale

1 Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

(a) the authority in charge of the register in the State of registration;

(b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer; and

(c) all holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims.

2 Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:

(a) the time and place of the forced sale; or

[(b) such particulars concerning the forced sale or the proceedings leading to the forced sale as the State conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.]

3 In addition to any notice by publication which may be required by the national law of the State conducting the forced sale, the notice specified in paragraph (2) of this article shall be written and may be given by receipted post or by any electronic or other appropriate means which provide confirmation of receipt.

[4 If permitted by the national law of the State conducting the proceedings, any person entitled to receive notice in accordance with this article may waive such notice]".

ARTICLE 11

Effects of forced sale

84 The Sessional Group considered a proposal submitted by the United States, contained in document JIGE(VI)/4. In introducing its proposal, the delegation of the United States explained that the requirement of paragraph (c) of the basic text that the proceeds of a forced sale be "actually available and freely transferable", while intended to protect the interests of mortgagees and other creditors might, in fact, produce the opposite result. In particular, the delegation believed that this requirement might effectively eliminate the common practice of credit bidding which enables mortgagees to protect their investment by using mortgage indebtedness to purchase the vessel and undertaking to pay all expenses and other claims ranking above the mortgage. This practice did not actually involve the deposit of "proceeds" as contemplated in the basic text. Alternatively, the delegation expressed its willingness to accept the inclusion of the following text which was proposed by another delegation, as paragraph 4:

> "A State Party shall ensure that the proceeds of the forced sale are actually available and freely transferable".

85 One delegation suggested that the proposed paragraph 4 should be redrafted to read as follows:

> "States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable".

This text met the approval of most delegations and the Sessional Group agreed to incorporate it in the text of the draft convention, as paragraph 4 of article 11.

86 Several delegations expressed reservations about the proposal to delete the words "all of" in paragraph 1(b). In their opinion, such a deletion could be acceptable if the subparagraph was also redrafted to include references to article 10 and article 11. Accordingly, it was proposed that the text of paragraph 1(b) be revised to read as follows:

"(b) The sale has been effected in accordance with the law of the said State and the provisions of article 10 and this article of this Convention".

87 The Sessional Group agreed to incorporate this text.

88 With reference to paragraph 2, one delegation cautioned against the creation of claims for costs incurred for the upkeep of the vessel from the time of the arrest and the costs of repatriation of the crew. This delegation felt that the paragraph, as drafted, would have the effect of so creating further claims, contrary to paragraph 2 of article 12. This delegation, therefore, referred to the solution in the 1967 Convention under which it was left to the relevant national law, which costs should be first paid out of the proceeds of the forced sale, and to what extent.

89 Some delegations, however, pointed out that costs of repatriation of crew members had also been included in paragraph 1 of article 4. It was therefore questioned whether they should be retained in both articles.

90 One delegation recalled, however, that the provision referring to these costs had been included in both article 4 and article 11, bearing in mind that there were two different types of "costs of repatriation", namely, costs incurred by the crew who had abandoned the ship at the moment of the arrest or seizure, and the costs in respect of the crew which had stayed on board the ship during the proceedings leading to the forced sale. In the latter case the delegation believed that granting maritime lien was not sufficient.

91 Another delegation suggested that the words "or seizure" be added after "arrest" in the third line of paragraph 2. This proposal was accepted by the Sessional Group.

92 Most delegations agreed that the text within the second set of brackets in paragraph 2 should be retained and the text within the first set of brackets be deleted. It was, however, pointed out that the text should also include a reference to the distribution of the proceeds to the extent necessary to satisfy the claims of the preferred creditors. Accordingly, it was decided that the second sentence in paragraph 2, should read as follows:

"The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims".

93 Several delegations welcomed the drafting in the last sentence of paragraph 3 which clarified the obligations of a registrar in one State Party following the production of a certificate of a forced sale issued by another State Party.

94 One delegation questioned the soundness of this provision. The delegation noted that the provision would impose on the registrar of a State Party the duty to delete all registered mortgages, "hypothèques" or other charges, even where the State in which the forced sale took place was not prepared to make the respective proceeds freely transferable. Because of the requirements of public order, this delegation could not accept such a provision and it reserved the right to introduce a provision to permit States Parties to make suitable reservations on the matter.

95 One delegation proposed to insert after the word "registrar", in line 10 of paragraph 3 of the basic text, the term "in a State Party". This proposal was supported by some delegations.

96 In respect of paragraph 2, the observer for the International Association of Ports and Harbors (IAPH) called attention to the fact that more and more vessels were now abandoned in ports, whether or not they had previously been repaired. Ports would have to incur major expenditure for the safety of such abandoned ships, thereby preserving their value in the event of a forced sale. Their claim, therefore, should have priority over all competing claims, including, when applicable, those of the repairers, in the distribution of the proceeds of such sale.

97 The Sessional Group decided to adopt article 11 with the agreed amendments, including the deletion of paragraph 1(c) and the reference in paragraph 3 to proceeds of sale being available and freely transferable.

ARTICLE 12

Scope of application

98 One delegation was of the view that, restricting the application of the Convention to seagoing vessels only, as proposed in paragraph 1, would increase the risk of fraud against claims secured by maritime liens and mortgages when such claims were in respect of a seagoing vessel which was subsequently used solely for inland navigation. To avoid this risk, this delegation suggested that the scope of application of the Convention be extended to vessels essentially engaged in inland navigation, if they were seagoing vessels at the time when the liens or mortgages were created.

99 One delegation objected to the provision enabling the application of the Convention to seagoing vessels registered in a State which would not be party to the proposed convention.

100 One delegation reiterated its possition held in previous sessions of the Group that the new convention would not be acceptable to its authorities unless a further paragraph were to be added regarding State-owned vessels used for commercial purposes. The proposal, made at earlier sessions of the Joint Group was that a vessel owned by a State and used for commercial purposes should be exempted from arrest for the enforcement of maritime liens, provided that the vessel carried a certificate issued by the appropriate authorities of the State of the vessel's registry stating that the vessel was owned by that State and that the vessel's liability under claims enumerated in article 4 was covered.

101 This delegation further requested that the words in paragraph 2 describing public non-commercial vessels be reconsidered to ensure that the terminology conformed to that used in the United Nations Convention on the Law of the Sea, 1982.

102 Subject to the possible changes referred to in paragraph 101, the Sessional Group decided that the text should remain unchanged.

ARTICLE 13

Communication between States Parties

103 One delegation emphasized that, while article 13 dealt with the communication between States Parties, the problem of direct notifications between the authority of one State and private persons in another State had not been addressed. The delegation suggested that this was an important matter which needed to be dealt with.

104 Another delegation pointed out that provisions envisaging communication between the authorities of one State and private persons in another State had been incorporated in several international conventions. The Sessional Group was not opposed to that interpretation and decided to keep the basic text unchanged.

ARTICLE 14

Conflict of conventions

105 One delegation suggested that the 1952 Arrest Convention be mentioned within the context of this article. However, another delegation recalled the decision taken by the Sessional Group that the text should remain unchanged pending the review of the 1952 Arrest Convention which was expected to be undertaken in the light of the final decisions adopted on the provisions of the new Convention on Maritime Liens and Mortgages. Accordingly, the Sessional Group decided that the text should remain unchanged.

ARTICLE 15

Temporary change of flag

106 In discussing article 15, the Sessional Group gave consideration to the proposal submitted by the delegation of the United States, in document JIGE(VI)/4. The proposal was to limit the application of the article between States Parties by including the word "Party" after the word "State" in line 1 of the chapeau of the article. It further proposed

to amend paragraph (c) of the article to ensure that the validity of mortgages would not depend upon the fulfilment of an administrative requirement over which mortgagees had no control. It was, therefore, suggested to limit the requirement in paragraph (c) to undertaking by States of an obligation to require cross-references in their registers without affecting the validity of the mortgage.

107 It was recalled that as a result of the practice, by some States, of permitting a vessel to fly temporarily the flag of a State other than that of the vessel's registration, it had been felt necessary to include provisions in the draft convention in order to clarify certain terms used in the draft convention so as to avoid any ambiguity and confusion and to protect the interests of the mortgagees. For this purpose, a working group had been set up during the fourth session of the Joint Group to prepare appropriate provisions. Further proposals had been submitted by some delegations during the fifth session, and the proposed provisions have been incorporated in article 15.

108 The majority of delegations expressed support for the principles included in the article. As regards the United States' proposal concerning the chapeau of the article, some delegations stated that they could not accept the proposal as it restricted the application of the provisions of the article only between States Parties.

109 Paragraph (a) was considered by all delegations as the most important provision since it made it clear that the terms "State of registration" and the "State in which the vessel is registered" referred to the State in which the vessel was registered immediately prior to the change of flag.

110 Doubts were expressed by some delegations concerning the retention of paragraph (b). These delegations stated that in view of the existence of article 2 and paragraph (a) of article 15, paragraph (b) was superfluous and unnecessary. Other delegations, however, felt that a clear statement of the applicable law for the purpose of recognition of mortgages, hypothèques and charges was necessary and that paragraph (b) should be retained. One delegation wondered whether there was a possible conflict between the provision of this paragraph and that of article 12 of the United Nations Convention on Conditions for Registration of Ships, 1986. It was, however,

explained by another delegation that paragraph (b) included a private international law rule, while the 1986 Registration Convention dealt with public law matters.

111 The majority of delegations expressed support for the proposal, submitted by the delegation of the United States, concerning paragraph (c). They agreed that the basic text of paragraph (c) would considerably weaken the position of the mortgagees by subjecting the validity of the mortgage upon an administrative requirement.

112 Some delegations wanted the deletion of paragraph (c) as they did not feel it appropriate to deal with matters of public policy in the draft Convention. These delegations, nevertheless agreed to adopt the proposal of the delegation of the United States as they believed that the proposal was aimed at protecting the interests of the mortgagees with a view to facilitating ship financing.

113 One delegation expressed the view that the provision contained in the basic text of paragraph (c) is a consequence of the basic principle stated in article 1, that only mortgages and hypothèques which are the object of some form of publicity and whose existence can be immediately perceived by other creditors shall be entitled to recognition and enforcement. According to the proposal submitted by the delegation of the United States, the existence of such adequate form of publicity would not be a condition any more for the recognition of mortgages, hypothèques and charges. As this consequence would be in contrast with a basic principle of law, in particular of civil law, this delegation expressed its preference for the basic text.

114 One delegation proposed to delete the word "flag" from the phrase "flag register" used in the United States' proposal. This delegation felt that it was undesirable to introduce such a new concept into the article. The delegation of the United States agreed with this proposal. Another delegation, however, expressed concern over the use of the word "register" in relation to the recording of the temporary change of flag. The delegation, therefore, proposed to use the term "vessel's record" since the phrase had been used in other paragraphs of article 15.

115 One delegation proposed to amend paragraph (d) by deleting the words "all registered mortgages, 'hypothèques' or charges on the vessel have been previously satisfied", so that the paragraph would read:

> "(d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless the written consent of the holders of all registered mortgages, 'hypothèques' or charges has been obtained".

116 This proposal received support from many delegations. One delegation, however, stated that in conformity with the provision of article 3(1) concerning change of registration, paragraph (b) of article 15 should further require that no temporary change of flag shall be permitted unless such mortgages/hypothèques or charges have been previously deregistered.

117 No objection was made, in principle, to paragraph (e).

118 Some delegations proposed to delete paragraph (f) on the grounds that it dealt with matters of public law and was not appropriate to be included in the draft Convention. The majority of delegations, however, preferred to retain the paragraph. These delegations felt that, although the paragraph dealt with matters of public law, it was necessary to be included in order to protect the interests of the mortgagee and the purchaser. One delegation, however, stated that the public law provisions of the article needed further review and clarification.

119 No objection was made concerning paragraph (g).

120 The observer for the ICS stated that the ICS supported the principles included in article 15. This observer delegation emphasized that mortgagees would only give consent to the temporary change of flag if their security remained untouched and their legal position was made clear. It was, therefore, essential that the applicable law remained the law of the original State of registration, and it was clarified that the mortgages had to be registered only in one register and be subject to one law. Thus, ICS supported the proposal of the United States concerning paragraph (c).

121 The observer for the International Chamber of Commerce (ICC) associated himself with the views expressed by the observer for the ICS. He further urged the retention of the wording in paragraph (b) as it was essential to specify clearly the applicable law in relation to the recognition of mortgages, hypothèques and charges.

122 The Sessional Group decided to retain article 15, with paragraph (c) thereof replaced by the proposal of the United States, corrected by deleting the word "flag" in line 6 of the proposal. It was agreed that this text would be subject to further drafting refinement.

123 The Sessional Group also noted that there was significant support for the proposal put forward in relation to paragraph (d) (see paragraph 115 of this report), but that the draft would require further amendment in the light of the discussions in the Sessional Group.

Draft final clauses

124 The Sessional Group gave preliminary consideration to the draft final clauses contained in part B of document JIGE(VI)/2. The Sessional Group decided to delete paragraph 4 of article A, which dealt with the possible withdrawal of consent by a State to be bound by the Convention prior to entry into force of the Convention.

125 One delegation stated that consideration may be given to including a tonnage element in the requirement for entry into force of the Convention.

Item 3 - Consideration of the scope of the revision of the International Convention Relating to the Arrest of Seagoing Ships, signed at Brussels on 10 May 1952

126 The Sessional Group had before it a document prepared by the Secretariats of UNCTAD and IMO, issued by UNCTAD under cover of TD/B/C.4/AC.8/22 and by IMO under cover of LEG/MLM/22. This document, which had been prepared by the Secretariats in response to a request from the Joint Group, at its fifth session, included consideration of certain articles of the 1952 Convention which might require amendment.

127 At the request of the Chairman, the observer for the CMI described some of the possible amendments to the Arrest Convention of 1952 which might be required as a result of the decisions which had been taken in relation to the draft Maritime Liens and Mortgages Convention, including:

(i) Article 1, paragraph (1), which provided a list of maritime claims in respect of which a vessel may be arrested. It was pointed out that maritime claims listed in this paragraph should be brought in line with the description of maritime liens set out in paragraph (1) of article 4 of the draft Convention on Maritime Liens and Mortgages. It was further noted that the description and terminology used in this article differed from those of the draft Maritime Liens and Mortgages Convention, for example, in respect of crew wages, hypothecation, damage caused by collision and loss of life and personal injury. It was, therefore, essential that the language used in both conventions was identical or as close as possible, and that the list of maritime claims in article 1(1) included all maritime liens.

(ii) With regard to article 3, paragraph (4), which contained provisions concerning vessels that might be arrested in respect of a maritime claim, it was recalled that the paragraph included provisions for arrest in cases where the vessel had been chartered by demise and the charterer, rather than the registered owner, was responsible in respect of the claim. It was noted that the last sentence of paragraph 4 of article 3 was ambiguous and might be interpreted as allowing arrest of the vessel for claims against the charterer irrespective of the personal liability of the owner. While article 4(1) of the draft Maritime Liens and Mortgages Convention only permitted claims against bareboat charterer to be secured by maritime lien on the vessel, article 3(4) of the Arrest Convention would allow arrest of the vessel for claims also against voyage and time charterers.

128 The majority of delegations, however, felt that a cautious approach should be taken in relation to amending the 1952 Arrest Convention in view of its wide acceptance. It was, nevertheless, pointed out by some delegations that the fact that this Convention had a large number of Contracting States

did not mean that it would not have deficiencies and shortcomings and could not be amended.

129 Most delegations felt that in view of its close relationship with the draft Maritime Liens and Mortgages Convention, any amendments, even of a consequential nature, would be premature at this stage. It was, therefore, suggested to postpone any such amendment until after the adoption of the draft Maritime Liens and Mortgages Convention by a diplomatic conference.

130 The Sessional Group expressed appreciation to the Secretariats of IMO and UNCTAD for the high quality of the document submitted by them which had been most useful to the Sessional Group in its consideration of this subject.

131 One delegation, however, felt that a full review of the Arrest Convention was desirable and it was, therefore, appropriate that more time is allocated to the Joint Group to carry out the necessary work in this respect.

132 One delegation which, at the fifth session of the Joint Group, had proposed a broader review by the Secretariats in their report of the Arrest Convention, stated that its country had two particular concerns with regard to this Convention, namely, that the Convention allowed arrest of the vessel for maritime claims not secured by maritime liens, irrespective of the personal liability of the owner, which had the effect of creating further hidden charges. Furthermore, the fact that the Convention left all matters relating to consequences of wrongful arrest and posting security by the claimant for damages to national laws was considered unsatisfactory. This delegation stated that although the CMI Draft Revision of the Arrest Convention was an improvement, it did not, however, solve all the problems. This delegation felt that any fundamental revision of the Convention, in order to be successful, would require a willingness on the part of at least some of the present Contracting States to have such a revision. In the absence of an indication of such willingness, this delegation could accept the cautious approach supported by the majority of delegations and agree that primary focus should be on consequential changes at this stage. This view was shared by other delegations which had also, at the fifth session, supported a broader review by the Secretariats in the study of the Arrest Convention.

133 The observer for the Institute of International Container Lessors (IICL) stated that in any future amendment of the Arrest Convention consideration may be given to updating the definition provided by the Convention in respect of supply of goods or materials to a ship for her operation or maintenance. This was also essential in order to overcome the difficulties caused as a result of recent court decisions in some jurisdictions.

134 In view of the above discussions, the Sessional Group agreed that although it may be necessary to amend the 1952 Arrest Convention in the light of the decisions which might be taken by a diplomatic conference in relation to the draft Convention on Maritime Liens and Mortgages, the preparation of any such amendment would be premature at this stage and had to be postponed until after the adoption of the final text of the Convention on Maritime Liens and Mortgages by a diplomatic conference.

Item 4 - Consideration of the final report of the Joint Intergovernmental Group on its work to the Committee on Shipping of UNCTAD and the Council of IMO

135 The outcome of the deliberations of the Sessional Group on this item, as approved by the Joint Group, is contained in document JIGE(VI)/8.